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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 450

ARTHUR P. ALLEN, CHAIRMAN, TWELFTH REGION WAGE STABILIZATION BOARD, ET AL., APPELLANTS

v.

GRAND CENTRAL AIRCRAFT CO., A CALIFORNIA CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the three-judge United States District Court for the Northern District of California, Southern Division (R. 33–36), is reported at 114 F. Supp. 389.

JURISDICTION

The judgment of the three-judge district court, especially convened pursuant to 28 U. S. C. 2282, was entered on July 31, 1953 (R. 31–32). The petition for appeal was presented to (R. 38), and allowed by, Goodman, D. J., on September 24, 1953 (R. 39). This Court noted probable jurisdiction on January 4, 1954 (R. 41). The jurisdiction of this Court rests on 28 U. S. C. 1253.

QUESTIONS PRESENTED

1. Whether appellee was entitled to enjoin the administrative proceeding before the National Enforcement Commission, prior to the holding of the initial hearing, in order to avoid irreparable injury.

2. Whether Section 405 (b) of the Defense Production Act of 1950 authorizes an administrative enforcement procedure for the disallowance, for income tax computation and other purposes, of wages paid by an employer in excess of applicable wage ceilings.

3. Whether the expiration of Title IV of the Defense Production Act bars the continuation of administrative proceedings for the determination of liabilities for violation of the wage stabilization provisions prior to their expiration.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Stabilization Act of 1942, of the Defense Production Act of 1950 as amended and of the Regulations issued thereunder are set forth in the Appendix, *infra,* pp. 78–103. The statutory scheme and the more pertinent provisions are described at the beginning of the Statement immediately below.

STATEMENT

1. THE LEGISLATIVE AND REGULATORY BACKGROUND

(a) *The Defense Production Act.* Title IV of the Defense Production Act of 1950, approved on September 8, 1950 (64 Stat. 798, 50 U. S. C. App.

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(Supp. V), 2061 *ff.*) gave the President stand-by authority to stabilize prices and wages. The principal method utilized to enforce the wage control provisions of the Act was contained in Section 405 (b):[1]

> (b) No employer shall pay, and no employee shall receive, any wage, salary, or other compensation in contravention of any regulation or order promulgated by the President under this title. The President shall also prescribe the extent to which any wage, salary, or compensation payment made in contravention of any such regulation or order shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

(b) *The Regulations issued under the Defense Production Act.* By Executive Order No. 10161 of September 9, 1950 (15 F. R. 6105), the President created the Economic Stabilization Agency, headed by an Economic Stabilization Administrator, as a "new and independent agency"[2] and delegated to him his functions under Title IV of the Defense Production Act (Price and Wage Stabilization); the Order also established within the Agency a tripartite Wage Stabilization Board composed of

[1] Section 409 provided injunctive relief and criminal sanctions.

[2] Cf. Section 403 of the Defense Production Act. Section 703 gave the power to delegate his functions under the Act and to authorize the redelegation of the functions so conferred.

nine members. On January 24, 1951, the Economic Stabilization Administrator redelegated his authority to enforce wage stabilization to the Wage Stabilization Board (Economic Stabilization Agency, General Order No. 3, 16 F. R. 739).

Two days later, on January 26, 1951, the President exercised the stand-by power conferred upon him to stabilize prices and wages.[3] Price control was imposed by the General Ceiling Price Regulation of January 26, 1951, issued by the Director of Price Stabilization (16 F. R. 808). On the same day the Economic Stabilization Administrator issued General Wage Stabilization Regulation No. 1 (16 F. R. 816), which froze wages as of January 25, 1951. The Wage Stabilization Board immediately exercised its substantive control powers. Several months, however, passed before the Board began to carry out its enforcement functions. On June 13, 1951, it issued Enforcement Regulation No. 1 (16 F. R. 6028), which established a National Enforcement Commission, charged with the enforcement of the Wage Stabilization Program, including the determination of and certification to other agencies of such wage payments as were to be disregarded under Section 405 (b). A resolution of the Wage Stabilization Board dated June 28, 1951 (16 F. R. 7284), set forth in detail the procedure before the National Enforcement Commission and the considerations which were to determine the amount of the dis-

[3] Letter of the President of January 26, 1951, 16 F. R. 793.

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allowances under Section 405 (b).[4] These orders were the forerunners of the regulations controlling the proceedings in the instant case which are described in detail below.

On July 28, 1952, the Economic Stabilization Administrator issued his General Order No. 18 (17 F. R. 6925, Appendix, *infra*, pp. 94–97)[5] pursuant to which the National Enforcement Commission was transferred from the Wage Stabilization Board[6] to its parent agency, the Economic Stabilization Agency, and charged not only as heretofore with the enforcement of wage stabilization, but also with the enforcement of stabilization of salaries and of railroad and airline wages (Section 4 (a)). Section 5 expressly redelegated to the National Enforcement Commission the authority to impose disallowance sanctions under Section 405 (b) of the Act. Pursuant to Section 4 (b) of General Order No. 18, the Commission was to be guided by the policy and procedure set forth in Economic Stabilization Agency General Order No. 15 of April 3, 1952 (17 F. R. 2994).

General Order No. 15 (17 F. R. 2994, as amended November 4, 1952, 17 F. R. 9977, Appen-

[4] The pertinent provisions of the Resolution of June 28, 1951, were reissued in the Wage Stabilization Board's General Wage Procedural Regulation of September 20, 1951 (16 F. R. 10018).

[5] See also General Order No. 18, Amendment 1, of November 4, 1952 (17 F. R. 9977).

[6] The Wage Stabilization Board had been placed on a statutory basis by the Defense Production Act Amendment of 1952, Section 403 (b)–(d) as amended.

dix, *infra*, pp. 89–93) dealt primarily with the substance of the enforcement proceedings. Section 3 (*infra*, p. 90) gave the National Enforcement Commission authority to determine whether any wages had been paid in violation of the Act and to determine the amount of payments to be disallowed pursuant to Section 405 (b).

Section 4 (a) (*infra*, p. 91) provided that wage payments made in violation of the Act could be disallowed for the purposes of:

> (1) calculating deductions for the purpose of determining gain under the revenue laws;
>
> (2) determining costs and expenses under government contracts;
>
> (3) establishing maximum prices;
>
> (4) generally, the determination of costs and expenses for the purposes of other laws or regulations.

Section 4 (b) (*infra*, pp. 91–92) formulated the standards which were to be followed in determining the amount of the disallowance. While the entire amount of the illegal payroll could be disallowed, the Commission was authorized to determine a lesser amount, usually related to the illegal excess, in the presence of mitigating circumstances such as:

> (1) prompt and voluntary disclosure;
>
> (2) prompt and full cooperation;
>
> (3) prompt remedying of the violation;
>
> (4) adoption of prompt and adequate measures to prevent repetition;

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(5) inadvertency of violation;
(6) other circumstances.

The actual practice discloses that in almost every case the Commission exercised its power to take mitigating circumstances into account. The disallowance of the entire unauthorized payroll was the rare exception, and the usual sanction imposed amounted to the excessive wage payments.[7] Sec-

[7] We have been advised by the Office of Defense Mobilization that the National Enforcement Commission issued 132 written opinions disposing of 166 cases. In 9 instances the complaint was dismissed; 46 involved the disposition of stipulations for the entry of disallowances upon consent. In the remaining 111 cases the disallowance equalled the excess payments in 61 instances. It was less than the excess in 32 cases. In 18 cases, more than the excess payments was disallowed. In 16 of these cases, the disallowance was geared to the excess payments and amounted to:

Four times the excess in	1 case
Three times the excess in	1 case
Twice the excess in	8 cases
One and one-half times the excess in	1 case
1⅒ the excess in	1 case
	12 cases

In three cases the disallowance amounted to the excess payment for a part of the period and twice the excess for the remainder; in one instance the order provided for the disallowance of the excess for one part of the period and three times for the remaining—considerably shorter—period of the violation (*Superlite Materials Co.*, Bureau of National Affairs, Labor Relations Reporter, Wage and Salary Controls, Binder 7, WHM 100:1200x).

The disallowance was measured by the illegal payroll only in the two remaining cases: *In re Hedin Construction Co.*, Bureau of National Affairs, Labor Relations Reporter, Wage and Salary Controls, Binder 7, WHM 100:1153, and *In re Tool, Die and Gage Shop*, *ibid.*, WHM 100:1200z 19.

tion 6 (*infra,* p. 93) dealt with the effect of a determination of the Commission and provided that:

> [a]ny such determination shall be conclusive on all Executive Departments and agencies of the Government, and they shall disregard and disallow the amounts thus certified. Any determination made pursuant to this authority under the Defense Production Act, as amended, shall be final and not subject to review by The Tax Court of the United States or by any court in any civil proceeding.

The procedure to be followed by the Commission was carefully set forth in the Revised General Procedural Regulation No. 1 of August 21, 1952 (17 F. R. 7737, Appendix, *infra,* pp. 97–103). Under this regulation, an enforcement proceeding required a complaint by the prosecuting agency, the right to answer and make appropriate motions, appearance through counsel on the part of respondent, and a hearing, of which an official transcript was made, with the right to examine and cross-examine witnesses. Sections 2.1–2.7. Provisions were made

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In the former case the Commission disallowed the excess payments for approximately one half of the period involved and one half of the illegal payroll for the remainder. In the latter case in which the Commission found "a deliberate and intentional violation after being expressly informed of his obligations under the law" (*ibid.* at 100:1200z 21) it disallowed the entire payroll amounting to $3,082.27 over a period of about five weeks.

The decisions of the National Enforcement Commission, although not officially "reported", were publicly and widely distributed, and many of them can be found in Bureau of National Affairs, Labor Relations Reporter, referred to above.

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for stipulation of facts, the issuance of subpoenas, and the presence of intervenors. Sections 2.7, 3.1, 3.2 The hearings were to be conducted regionally by a designated Enforcement Commissioner to whom proposed findings, recommendations, and briefs could be submitted. Section 4.1. The Enforcement Commissioner was required to follow and apply the standards of General Order 15, *supra,* and to make his findings and determinations in writing, together with a recommendation as to the appropriate amount of disallowance, if any. Section 4.1. The Enforcement Commissioner was further required to file his findings and determinations with the National Enforcement Commission and to serve copies on the parties. Section 4.1. Equally elaborate provisions were set forth with regard to appeals to the National Enforcement Commission. Section 5.1. If no appeal were taken, the findings and recommendation of the Enforcement Commissioner, in the absence of clear error, were to be adopted by the Commission. Section 4.1 (f). If an appeal were taken, the Commission, on the whole record, was empowered to affirm, modify, or reverse the Enforcement Commissioner, to remand the case for further hearing, or to dismiss the complaint. Section 5.2. The findings and determinations of the National Enforcement Commission were to be final. Section 5.2 (c). Based on final disposition of the matter or upon stipulation, the National Enforcement Commission was authorized to issue a Certificate of Dis-

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allowance, fixing the amount to the disregarded by reason of the wage or salary violations. Sections 6.1, 8.1.[8]

(c) *The deactivation of the Wage Stabilization Program.* Executive Order 10434 of February 6, 1953 (18 F. R. 809) suspended the wage and salary stabilization program of the Defense Production Act, but provided that this suspension was not to—

> operate to defeat any suit, action, prosecution, or administrative proceeding, whether heretofore or hereafter commenced, with respect to any right, liability, or offense possessed, incurred, or committed prior to this date.

Pursuant to Section 717 (a) of the Act (*infra*, p. 86), Title IV and all authority conferred thereunder terminated on April 30, 1953. Subsection (b) (3) of Section 717, however, provided that:

> Any agency created under this Act may be continued in existence for purposes of liquidation for not to exceed six months after the termination of the provision authorizing the creation of such agency.

Executive Order No. 10494 of October 14, 1953 (18 F. R. 6585), delegated, effective November 1, 1953, the function

> of conducting administrative proceedings under Title IV of the Act, including the conclusion of those instituted pursuant to section 405 * * * to the Director of the Office of Defense Mobilization.

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[8] As we shall show, *infra*, pp. 45–49, these regulations substantially followed the administrative practice established under World War II wage control.

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Certain of the powers created by Title VII of the Defense Production Act, which do not expire until June 30, 1955, are exercised by the Office of Defense Mobilization. Section 717 (a), *infra*, p. 86. The Director of Defense Mobilization by his Order dated November 1, 1953 (18 F. R. 6966) authorized the Assistant Director of the Office of Defense Mobilization to carry out the functions delegated by Executive Order No. 10494. The November 1, 1953, Orders adopted and incorporated General Orders Nos. 15 and 18 (*supra*, pp. 5–8) as amended, and Economic Stabilization Agency General Procedural Regulation 1 Revised (*supra*, pp. 8–10).

2. THE CONTROVERSY HERE INVOLVED

(a) *The administrative proceedings.* Appellee Grand Central Aircraft Co. is a California corporation, doing business in Glendale, California, and Tucson, Arizona. It is engaged in the production and repair of aircraft equipment (R. 2; Complaint, par. II). On November 4, 1952, the Wage Stabilization Board, pursuant to General Procedural Regulation 1 (Revised) (hereafter referred to as GPR 1), Section 2.1 (17 F. R. 7737, 7738) filed a complaint with the National Enforcement Commission alleging in substance that appellee had granted wage increases in 1951 in violation of General Wage Stabilization Regulation 1[9] (R. 8–10; Exhibit to Complaint and

[9] 16 F. R. 816; cf. *supra*, p. 4.

par. 9 of Complaint). On January 14, 1953, appellant Phil C. Neal was appointed Enforcement Commissioner by the National Enforcement Commission pursuant to GPR 1, Section 2.3 (Appendix, *infra,* p. 98) for the purpose of taking evidence (R. 4; Complaint, par. X). On February 11, 1953, Neal set the case down for a hearing on February 24, 1953 (R. 4; Complaint, par. X).

(b) *The proceedings below.* On February 13, 1953, respondent instituted the instant proceedings by filing a complaint in the United States District Court for the Northern District of California, Southern Division, to restrain, among others, the members of the Wage Stabilization Board, the National Enforcement Commission, officials of the Twelfth Region Wage Stabilization Board, and the Enforcement Commissioner from proceeding with the administrative hearing (R. 1–8).[10] The complaint denied that Grand Central had violated the Defense Production Act or any regulative order issued thereunder (R. 7; Complaint, par. XV) and alleged in substance that the Defense Production Act was unconstitutional, that the regulations

[10] The members of the Wage Stabilization Board of the National Enforcement Commission, and other defendants whose official station was in Washington never were served with process. The complaint alleges that the members of the Twelfth Region Wage Stabilization Board and their counsel were threatening to prosecute the complaint before the National Enforcement Commission (R. 4). Apart from the Enforcement Commissioner designated to hold hearings, none of the defendants is any longer employed by the Government.

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issued thereunder were in conflict with the statutory requirements, and that the holding of the hearing would inflict irreparable damage upon Grand Central.

The hearing before the Enforcement Commissioner was thereupon postponed to abide the outcome of the judicial proceedings. A three-judge court appointed on March 11, 1953, pursuant to 28 U. S. C. 2282, issued a temporary restraining order on March 20, 1953, against Enforcement Commissioner Neal and the members and officials of the Twelfth Region Wage Stabilization Board who were within the jurisdiction of the Board (R. 15–16).[11] On May 28, 1953, the court issued an interlocutory injunction against the same officials (R. 19–20).[12]

On July 24, 1953, a hearing was held before the three-judge court (R. 42–79), and evidence was introduced by appellee to support its allegations of

[11] On April 3, 1953, the defendant officials moved to vacate the temporary restraining order, pointing out that appellee could suffer irreparable injury only if the administrative hearing culminated in issuance of a disallowance certificate. The motion to vacate also stated that if the administrative proceeding before the Enforcement Commissioner was allowed to continue, no certificate of disallowance would be issued by the National Enforcement Commission until two weeks after the Commission's final decision, which would have enabled appellee, during that two-week period, to seek any judicial remedies it might then desire. The district court denied the motion on May 11, 1953. (R. 16, 17.)

[12] On June 15, 1953, this Court denied an application for a stay of the interlocutory injunction filed by the defendants Norback and Neal, *sub nom. Norback et al.* v. *Grand Central Aircraft Co.*, 345 U. S. 988. The late Chief Justice and Mr. Justice Burton dissented.

irreparable injury. On July 31, 1953, the court entered its opinion and findings of fact (R. 33–37). The court found (a) that the continuance of the administrative proceeding would cause irreparable damages to Grand Central because it would result in the withdrawal of bank credits and ultimately in bankruptcy, and (b) that Section 405 (b) of the Act merely authorized the President to prescribe the *extent* to which unauthorized payments were to be disregarded, but not to establish an administrative method of enforcement (R. 33–37). A judgment permanently enjoining the officials of the Twelfth Region Wage Stabilization Board and the appellant Neal, Enforcement Commissioner, from prosecuting, hearing any charges, or otherwise proceeding against appellee was entered on July 31, 1953 (R. 31–32).

(c) *Present status of proceedings.* As pointed out above (*supra,* pp. 10–11), the function of concluding administrative proceedings instituted under Section 405 of the Defense Production Act has been delegated by the President to the Director of the Office of Defense Mobilization, who in turn redelegated it to his Assistant Director. The remaining appellant, Enforcement Commissioner Phil C. Neal, is on the staff of the Office of Defense Mobilization and ready to conduct the hearing if the injunction is lifted.

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SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that the enforcement hearings would inflict irreparable injury upon appellee.

2. In holding that appellee did not have to exhaust the administrative process before seeking judicial relief.

3. In holding that Section 405 (b) of the Defense Production Act does not permit administrative means of enforcement.

4. In entering judgment for appellee.

SUMMARY OF ARGUMENT

I

In this case, a statutory three-judge court enjoined the holding of a hearing by a local Enforcement Commissioner, scheduled in accordance with the administrative procedure established by regulations issued pursuant to Section 405 (b) of the Defense Production Act of 1950. The purpose of the hearing thus enjoined was to inquire whether appellee had violated wage stabilization regulations during 1951 and, if so, to recommend an appropriate tax disallowance. The local Enforcement Commissioner's finding both with regard to the existence of violations and the appropriate amount of disallowance were purely recommendatory. If violations were found, an employer such as appellee, had a right to appeal to the National Enforcement Commis-

sion in Washington. If the finding of violation was sustained and an appropriate disallowance ascertained after final hearing, a certification would be issued to the Commissioner of Internal Revenue who would impose an appropriate deduction.

(a) First, the court below should have recognized the plain applicability of the rule requiring appellee to exhaust its administrative remedy. The well established principle, and the reasons which support it, should itself have been taken sufficient to reject appellee's request for equitable intervention. The regional hearing, if held, might have resulted in a finding that no violation had occurred or that no disallowance was warranted. The same result might have obtained after hearing, on appeal, before the National Enforcement Commission.

Appellee's request for an injunction should also have been rejected by reference to the rule precluding judicial review of administrative action until that action has reached the point where it exerts compulsive effect. Here, no actual compulsive action would have been taken until, after complete utilization of administrative machinery, a tax disallowance was imposed by the Commissioner of Internal Revenue. The remaining defendant in this case, the hearing officer, could only have filed a report and recommendation with the Commission in Washington.

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(b) Nor did appellee prove the kind of "injury" which is sufficient to make the doctrine of exhaustion of remedies inapplicable. Contentions with regard to the expense and inconvenience of scheduled proceedings have frequently been put forward and just as frequently rejected. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41. And the same is true as to claims of injury resulting from the threatened impairment of credit and interference with contractual relations with third parties. *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752; *United States* v. *Los Angeles & Salt Lake R. Co.*, 273 U. S. 299. It has been held that such inconveniences constitute an unavoidable part of the social burden of living under government and constitute no basis for avoiding an administrative proceeding or a trial.

The court below should also have rejected appellee's further claim with regard to irreparable injury, namely, that it would be unable to obtain judicial review after the termination of the administrative proceeding. Clearly, after the imposition of a certified tax disallowance by the Commissioner of Internal Revenue, the usual remedies of the taxpayer would be available. The nature and scope of such review would be determined at that stage of the proceeding; it should be sufficient for present purposes that at that time appellee could obtain the review to which it was legally entitled.

II

Assuming that any proper occasion was presented in this case for resolving appellee's contention as to statutory interpretation, we submit that the court below plainly erred in limiting wage stabilization enforcement to district court proceedings. The language of Section 405 (b), the crucial statutory provision, contains no indication that wage stabilization enforcement is so limited. The language of this section permits the use of an administrative hearing procedure to inquire into violations, and the imposition of an administrative disallowance sanction where violations have been found to exist. The correctness of this interpretation is proved beyond doubt by a consideration of the history of the provision.

(a) Section 405 (b) was specifically derived from, and substantially identical with, Section 5 of the Stabilization Act of 1942. Wage stabilization enforcement under the 1942 legislation, with the knowledge and approval of Congress, was achieved by administrative proceedings and disallowance substantially the same as those utilized under the 1950 Act. The matter came to the specific attention of Congress on many occasions, and was accepted as proper enforcement from the outset of the wage stabilization program in 1942 until the final termination of the enforcement proceedings in 1949. During that period,

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nearly 100,000 proceedings took place and disallowances totaling nearly $30,000,000 were made.

When, after an extremely short interval, Congress was again obliged to enact emergency control legislation to meet the needs of the period of hostilities in Korea, the language and experience of the 1942 emergency legislation were consciously utilized. The administrative disallowance sanction of Section 405 (b) was specifically taken from Section 5 of the Stabilization Act of 1942 as the most appropriate and effective enforcement procedure against violations of wage stabilization regulations and orders.

This conscious utilization of the enforcement procedure and sanction developed and applied during and after the World War II emergency control period, in itself, indicates beyond question that Congress intended and approved the interpretation of Section 405 (b) which was rejected by the court below. In addition, there is abundant evidence since the enactment of Section 405 (b) to show that Congress was fully aware of the interpretation given that section and the administrative procedure and sanction utilized thereunder.

For example, in 1951, Congress added administrative disallowance as an enforcement method in connection with violation of price regulations, specifically recognizing that, prior to that amendment, administrative enforcement had been available only in connection with wage stabilization

regulations. Again, a report of the Joint Committee on Defense Production, created to study the administration of emergency programs under the 1950 Act and report and recommend to Congress, described, as early as October, 1951, the administrative procedure utilized, stating that "* * * the enforcement commission will sit in a quasi judicial capacity to determine whether there have been violations and what penalties should be invoked. * * *" The Joint Committee's Second Annual Report, submitted in October, 1952, described the whole administrative enforcement procedure under Section 405 (b) in great detail. Indeed, Congress went so far as to appropriate money for the completion of cases such as this over objection by this appellee to the continuation of this very case.

From all of these materials, we think it clear that Congress intended Section 405 (b) to authorize the use of administrative procedures as a technique for the enforcement of wage stabilization regulations and orders entirely separate from enforcement by way of district court proceedings.

III

As the date approached upon which Congress had provided for the termination of the imposition of substantive controls, a number of employers, like appellee herein, sought injunctions against hearings scheduled to consider violations allegedly occurring during the period of control. These injunc-

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tion proceedings have prevented the completion of a number of scheduled hearings.

The power to continue and complete enforcement proceedings with regard to violations allegedly occurring during the substantive control period is not affected by the termination of the substantive control program or by the physical dissolution of the special agency created to administer and correlate that program during its life. On the contrary, the language, policy, and purpose of the General Savings Statute plainly preserves the power to continue and complete enforcement proceedings in the circumstances of this and similar cases.

The applicability of the General Savings Statute (1 U. S. C. (Supp. V) 109) can, of course, be lifted where Congress expressly so declares. Here, however, there is no express direction by Congress which would suffice to cut off enforcement at an incomplete stage. Neither the provision terminating the substantive control program nor the provision allowing six months for liquidation of the specially created agency constitutes such an express declaration. And the specific savings language of the Act, preserving "* * * any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date * * *" cannot be read as language expressly designed to wipe out any liabilities created by the Act. In fact, if this provision be read in the light of comparable language used in connection with the World War

II control program, and in the light of the complete liquidation of wage stabilization enforcement under that program, ending in 1949, it would seem plain that Congress must be deemed to have intended that enforcement be completed.

There are thus no indications of an express purpose in Congress to cause a lapse in the power to complete enforcement proceedings. On the contrary, there are clear indications that Congress intended that enforcement be processed to completion. For example, at appropriations hearings held after the termination of the substantive control program, it was assumed by both Houses of Congress that enforcement as to past violations would be continued and completed. The only problem was whether such completion could be achieved prior to the dissolution of the independent agency created to administer controls and the need of funds for that purpose. Again, in connection with the suggestion that the power to enforce lapsed with the physical dissolution of the independent control agency, committees of both Houses indicated, during the appropriations hearings referred to above, that, if enforcement could not be completed by the special agency, it would be completed by some other agency. Specific provisions of the statute require the same conclusion.

The Office of Defense Mobilization, to which the President delegated the completion of the enforcement function, in connection with wages stabilization, by Executive Order 10494, October 14, 1953,

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is not affected by the expiration of Title IV of the Defense Production Act. The President, in whom the basic power to enforce is lodged, possesses broad investigatory powers, continuing for a "period of two years" after the termination of the Act, including all powers necessary to institute administrative hearings. And the President is also given a specific power to delegate the authority conferred upon him.

All of these factors demonstrate that Congress has never intended the lapse of time to excuse violators of the wage stabilization enforcement program, and that the policy embodied in the General Savings Statute was intended to apply to cases such as this.

ARGUMENT

The statutory provisions establishing the pattern of enforcement in the field of wage and salary stabilization during World War II and the recent period of hostilities in Korea, the two periods in which national exigencies have made wage stabilization imperative, are set forth in Section 405 (b) of the Defense Production Act of 1950, as amended,[13] derived from Section 5 of the Stabilization Act of 1942.[14] Both sections condemned the payment of wages and salaries in excess of levels permitted by regulations issued under the substantive control program and au-

[13] 64 Stat. 798, 807, 50 U. S. C. App. (Supp. V) 2105 (b), *infra*, p. 81.

[14] 56 Stat. 767, 50 U. S. C. App. 965, *infra*, p. 44.

thorized the President to prescribe the extent to which wages or salaries so paid were to be disregarded by governmental agencies in determining the violating employer's costs or expenses for the purpose of any law or regulation. Under the statutory enforcement scheme, careful procedures were established. See pp. 6–10, *supra.*

Literally thousands of enforcement cases were processed during the two recent emergency periods under the statutory administrative scheme contained in Section 405 (b). Toward the close of the Korean hostilities period, when the termination of the substantive control program was clearly imminent, employers involved in a number of pending enforcement proceedings sought to prevent the completion of such proceedings. The alleged violations involved in these enforcement proceedings had, of course, accrued during the life of the substantive control program.

This is such a case. Here, the holding of a regional hearing, set down to inquire whether appellee had violated substantive control regulations and, if so, to make appropriate recommendations to the National Enforcement Commission in Washington, was enjoined by a statutory three-judge court. Putting to one side constitutional issues, the court below, conceding the President's statutory authority "* * * to prescribe the *extent* to which any unauthorized payment * * * may be disregarded by the Executive Departments (such as the Treasury) in determining gain for tax pur-

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poses * * *," (R. 36)[15] held that "the statute nowhere vests in the President or in any delegated agency the power to actually impose penalties" (R. 36). The power to enforce statutory liability was held to reside solely in the district courts. On the basis of this statutory interpretation and the finding that the appellee was threatened with irreparable injury, principally by reason of anticipated withdrawal of bank credit (R. 35), a permanent injunction was issued.[16]

We will demonstrate that the statutory interpretation adopted by the court below is erroneous. However, regardless of issues on the merits, we strongly urge that the court below, sitting as a court of equity, erred in enjoining the holding of the hearing.

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[15] As we show below, *infra*, pp. 38–39, this is the actual course pursued in those instances in which, after a final determination by the National Enforcement Commission in Washington, a wage stabilization violation is found to have occurred and an appropriate disallowance certified to the Commissioner of Internal Revenue.

[16] In support of its conclusion, the court below cited the district court opinion and judgment in *Jonco Aircraft Corp.* v. *Franklin*, 114 F. Supp. 392 (N. D. Tex.) which was reversed by this Court in 346 U. S. 868.

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I

THE COURT BELOW SHOULD HAVE ABSTAINED FROM EXERCISING ITS EQUITABLE POWERS TO ENJOIN THE HOLDING OF THE HEARING

A. THE ACTION OF THE COURT BELOW PREMATURELY INTERFERED WITH THE ORDERLY UTILIZATION AND EXHAUSTION OF THE ADMINISTRATIVE PROCEDURES AND REMEDIES

The action of the court below, forbidding the holding of a hearing by the Enforcement Commission, violated fundamental rules which govern the delicate relationship between the exercise of judicial powers and administrative procedures. Cf. *United States* v. *Morgan*, 307 U. S. 183, 190–191. First is the "exhaustion" rule, the rule that a court of equity will not interfere to prevent the orderly utilization of an available administrative procedure. Coupled with this rule of restraint is the principle that a court of equity will only review administrative activity which has ripened into an order exerting compulsive effect upon the one who seeks the court's aid, and then only in the absence of an adequate remedy at law. Either or both of these rules should have been applied by the court below in this case. In sharp contrast to the decision below is the action of another statutory three-judge court in the Southern District of California in denying an injunction, in a salary stabilization case, to appellee herein on allegations and facts essentially identical with those involved in the instant wage stabilization case. *Grand Central Aircraft Corp.* v. *Jones*, 24 CCH Labor Law Reporter

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No. 67832; see also *Sierra Drawn Steel Corp.* v. *Gregory*, 115 F. Supp. 545 (S. D. Cal.).

1. Nothing is more plainly established than the rule that no one "* * * is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50–51; *Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U. S. 375, 383–384; *Macauley* v. *Waterman Steamship Corp.*, 327 U. S. 540, 543; *Federal Power Commission* v. *Arkansas Power & Light Co.*, 330 U. S. 802; *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752; *Securities & Exchange Commission* v. *Otis & Co.*, 338 U. S. 843; *Public Service Commission of Utah* v. *Wycoff Company, Inc.*, 344 U. S. 237, 246; *Franklin* v. *Jonco Aircraft Corp.*, 346 U. S. 868; *Public Utilities Commission of California* v. *United Air Lines*, 346 U. S. 402. And no exception to this principle is created by allegations, such as those put forward by appellee in the court below, of constitutional invalidity or lack of statutory coverage or authority. *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752, 771 *et seq.*; *Franklin* v. *Jonco Aircraft Corp., supra; Myers* v. *Bethlehem Shipbuilding Corp., supra; Lawrence* v. *St. L.-S. F. Ry.*, 274 U. S. 588; *White* v. *Johnson*, 282 U. S. 367, 373; cf. *Gorham Manufacturing Co.* v. *State Tax Commission*, 266 U. S. 265. Nor is the "exhaustion" rule rendered inapplicable by the circumstance that the admininstrative remedy is

prescribed by regulation rather than by statute. *Fahey* v. *Mallonee,* 332 U. S. 245; *Goldsmith* v. *Board of Tax Appeals,* 270 U. S. 117, 123; *Red River Broadcasting Co.* v. *Federal Communications Commission,* 98 F. 2d 282, 286 (C. A. D. C.), certiorari denied, 305 U. S. 625, and see the recent opinion of Mr. Justice Reed in his denial of stay in *Twentieth Century Air Lines* v. *Ryan,* 98 L. Ed. (Adv. pp. 29, 32). On the contrary, the reason underlying the rule, namely, that the exhaustion of administrative procedure may yield a result which will obviate the need for any judicial consideration or render precise the exact scope of decision necessary, gains in force when challenges as to constitutionality or statutory coverage may thus be avoided or narrowly defined. *Aircraft & Diesel Corp.* v. *Hirsch, supra,* 772.

The considerations upon which the rule is based make obvious its applicability herein.[17] If the regional hearing had been permitted, it might have resulted in a finding that no violation on appellee's part had occurred or that, if a viola-

[17] We are not here concerned with situations where administrative orders become effective prior to the utilization of the administrative remedies, in which circumstances this Court has intimated that the requirement of exhaustion of remedies might be relaxed. Cf. *Aircraft & Diesel Corp.* v. *Hirsch,* 331 U. S. 752, 773; Administrative Procedure Act, Section 10 (c), 60 Stat. 237, 243. Nor are we concerned with cases in which final orders are issued in matters ancillary to a hearing. Cf. *Utah Fuel Co.* v. *National Bituminous Coal Commission,* 306 U. S. 56.

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tion had occurred, no disallowance or no more than a nominal disallowance was warranted in the light of the surrounding circumstances. The matter would there have ended. If, on the other hand, a violation had been found and a disallowance recommended, appellee had an appeal as of right to the National Enforcement Commission in Washington which might have sustained any or all of appellee's contentions. Again, there would have been no occasion for resort to the courts.[18]

2. The error of the court below in preventing the orderly utilization of the available administrative procedure is underscored by consideration of the closely related principle, clearly applicable here, that "administrative orders are not reviewable unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process." *Chicago and Southern Air Lines* v. *Waterman Corp.*, 333 U. S. 103, 112–113; *United States* v. *Los Angeles & Salt Lake R. Co.*, 273 U. S. 299, 309; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 130–131. Here, the proceedings enjoined were remote from any compulsory stage. The function of the

[18] The same result might be said to flow from an application of the equitable doctrine of clean hands. If, as appellee here contends, it has committed no violation, it may be presumed that the hearing officials, in the regular discharge of their duties, would so find. *Bourjois, Inc.*, v. *Chapman*, 301 U. S. 183, 188. If, on the other hand, violations would be discovered on the hearing, a court of equity should not aid in avoiding that discovery.

Enforcement Commissioner was to conduct a hearing and to submit to the National Enforcement Commission in Washington his findings with regard to the payment *vel non* of illegal wages and his determination as to the amount to be disallowed in the case of a violation (GPR 1, Sections 2.3, 4, *infra,* pp. 97–101). The activity of the Enforcement Commissioner, clearly without compulsory effect, would have terminated at this point (GPR 1, Section 4.1 (e), *infra,* pp. 97–98, 100). The National Enforcement Commission in Washington alone would have had the power to certify a disallowance and this only after a *de novo* review of the record on appeal, available to appellee as a matter of right[19] (GPR 1, Sections 5.1, 5.2, 6.1, *infra,* pp. 101–103).

The administrative action enjoined in the instant case was considerably further from an order imposing an obligation or determining a legal relationship than the orders held not reviewable in the *Chicago and Southern* and *Los Angeles and Salt Lake* cases. In the former, the Civil Aeronautics Board had completed its proceeding and entered its order; but the order was held not judicially reviewable because it required approval by the President. In the latter, the Interstate Commerce Commission had entered an order determining the "final value" of the railroad's property under the Valuation Act, but the valuation report was held not reviewable

[19] Even where an employer did not appeal, the Enforcement Commissioner's findings and recommendations did not become effective automatically but only after scrutiny and adoption by the National Enforcement Commission. GPR 1, Section 4.1 (f), *infra,* p. 100.

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because it did not require action or determine rights but was "merely preparation for possible action in some proceeding which may be instituted in the future." 273 U. S. at 309–10. In this case, the lower court has interfered prior to the entry of even a preliminary order which might be submitted to a superior authority for consideration or approval. The court below has prevented the holding of a hearing by the official who could at most have submitted recommendations to a superior body. It would seem to follow *a fortiori* from the *Chicago and Southern* and *Los Angeles* cases that the present suit is premature. Indeed, the *Chicago and Southern* case indicates that for the courts "to revise or review an administrative decision which has only the force of a recommendation" would be to render an advisory opinion in a manner not authorized by the Judiciary Article of the Constitution. 333 U. S. at 113–114.

In any event, since the only official enjoined is a hearing officer who could merely have formulated recommendations, there was no occasion for such intervention. *Pennsylvania R. Co.* v. *Labor Board,* 261 U. S. 72, 84; *Employers Group* v. *National War Labor Board,* 143 F. 2d 145 (C. A. D. C.); *National War Labor Board* v. *Montgomery Ward & Co.,* 144 F. 2d 528 (C. A. D. C.). Final action in the administrative proceeding here involved could have been taken only by officials in Washington who were not made parties to this case. Merely naming such officials in the complaint could not suffice to bring them within the jurisdiction of the court below. And they

were not served. In these circumstances, there was a fatal lack of indispensable parties. *Blackmar* v. *Guerre,* 342 U. S. 512.[20]

B. THE COURT BELOW ALSO ERRED IN FINDING THAT APPELLEE HAD MADE A SHOWING OF IRREPARABLE INJURY WARRANTING THE ENJOINING OF A HEARING

Where, as here, no hearing had been held, no compulsive order was imminent, and the only officials capable of final actions were beyond the jurisdiction of the court, there was no proper occasion for the court below to consider or pass upon appellee's allegations as to the injurious effect of the proposed administrative hearing upon the conduct of its business. Assuming, however, that the question should have been reached, we submit that the court below erred in finding that appellee had made a satisfactory showing.

Specifically, the court below found that "* * * the continuance of the threatened administrative proceeding will cause [appellee's] bank credit to be shut off and will disable [appellee] from continuing its operations" (R. 37). In addition, the court below, by reference to paragraph XV of the complaint (R. 37, 7), accepted the following allegations with regard to irreparable injury: (i) that appellee would be threatened for a period of time with retroactive disallowance of illegal wage payments and that this contingent

[20] It should be noted that the injunction issued below did not purport to reach the National Enforcement Commission or its members. *Supra,* p. 13.

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liability would prevent appellee from entering into contracts or continuing and expanding its business in a normal fashion until the liability was determined; (ii) appellee's officers and employees would be required to spend large amounts of time in preparing the case and acting as witnesses, counsel would have to be retained, and that all of such expenses incident to the administrative proceeding would be irrevocably lost to appellee; (iii) a certification of disallowance by the National Enforcement Commission to another government agency would require the receiving agency to make the disallowance, without any right in plaintiff to attack the disallowance before any court.

Appellee thus alleged, and the court below accepted, two classes of irreparable injury. The first category consisted of more or less customary allegations with regard to the inconvenience and expense of appellee resulting from the proposed administrative proceeding. The core of this contention, specifically accepted by the finding of the court below, was the claim that appellee's relationships with third parties, principally private lending or financing institutions, would be adversely affected.[20a] The second category consisted

[20a] There is no reason to assume that these types of injury would be any less if enforcement was by the courts or through the Treasury and ordinary tax review procedures, which appellee apparently believes unobjectionable. Appellee can only avoid such injuries if he can completely block all means by which the law may be enforced against it.

of the claim that appellee would not be able to obtain court review of a disallowance certified after the completion of an administrative proceeding. Neither of these categories should have been held sufficient to justify equitable intervention.

1. Turning first to the matter of the expense and business inconvenience claimed, it is well settled that the rule requiring the exhaustion of the administrative remedy cannot be circumvented by the claim that the expense and annoyance caused by the administrative proceedings would result in irreparable injury. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 51; *Petroleum Exploration, Inc.* v. *Public Service Commission*, 304 U. S. 209, 222. These inconveniences, common to every lawsuit and not, as appellee here seems to contend, peculiar to administrative proceedings, "are part of the social burden of living under government" (*Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. 2d 97, 100 (C. A. 5)); "no way has been discovered of relieving a defendant from the necessity of a trial to establish" the groundlessness of a charge. *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 51–52.

In short, this Court has repeatedly recognized, frequently in circumstances in which the proposed governmental action has had far more direct and immediate impact on the conduct of the complainant's business, that the unfavorable effect of impending proceedings on business affairs constitutes

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no more than the normal incidents of any large or serious litigation and cannot justify the exercise of the powers of a court of equity. In the *Aircraft & Diesel* case, the Government had prohibited, pending the outcome of a renegotiation controversy, the corporation's customers from paying over to the corporation approximately $270,000. Here, appellee's routine contentions with regard to the expense and inconvenience of the proceeding clearly fall far short of showing that sort of injury which would justify the issuance of an injunction.

No difference in result occurs if specific attention be directed to appellee's relationships with banks or other lending institutions.[21] This Court has consistently held that the anticipated adverse effect of administrative proceedings upon a company's contractual relationships with third parties, including its private financial arrangements and credit standing, does not constitute the sort of irreparable injury which suffices to bring a case within equity jurisdiction. *United States* v. *Los Angeles & Salt Lake R. R.,* 273 U. S. 299, 314–315; *Aircraft & Diesel Corp.* v. *Hirsch,* 331 U. S. 752, 777–778;

[21] The practical consequences of according special weight to impairment of credit allegations are readily foreseeable. The draftsman of the complaint can easily insert the allegation. At the hearing, a friendly witness can, with equal ease, prophecy the potential dire effects upon the complainant's credit standing. More difficult would be the task of refuting such a witness' estimate as to future conduct, usually on the part of the complainant's bank (cf. R. 62–73), or to produce rebuttal witnesses from other lending institutions.

Twentieth Century Air Lines v. *Ryan,* 98 L. Ed. (Adv. pp. 29, 32), opinion of Mr. Justice Reed upon denial of stay; see, also, *Arrow Distilleries* v. *Alexander,* 24 F. Supp. 880 (D. C. D. C., three-judge court).

In *United States* v. *Los Angeles & Salt Lake R. R.,* 273 U. S. 299, appellee had brought a suit in equity in order to suppress a valuation report prepared by the Interstate Commerce Commission. The complaint alleged that the Commission did not have the statutory authority to issue an order determining the value of the railroad's assets and that the publication of the report would result in irreparable injury. In amplification of the latter allegation, the railroad claimed that the report had grossly underestimated the corporation assets, actually amounting to $85,000,000, by assigning to them a value of merely $45,000,000, a figure considerably below that of the bonded indebtedness, thereby imperiling the railroad's credit and preventing it from obtaining the additional capital required for its normal growth and development. (Record on Appeal, No. 414, October Term 1926, pp. 26–28.) This Court stated that no basis for equitable action against the Commission was supplied by allegations, comparable to those rejected in *Pennsylvania R. Co.* v. *Labor Board,* 261 U. S. 72, that the alleged undervaluation would injure the railroad's credit with third parties, 273 U. S. at 314.

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Again in the *Aircraft & Diesel Corp.* case, the Court rejected as insufficient bases for equitable relief allegations that the appellant's credit might be impaired. The Court stated (331 U. S. at 777, n. 42):

> It is alleged that appellant, unless allowed to maintain this suit, will be caused unnecessarily to run the risk of *impaired credit* or insolvency of customers directed to withhold funds; *that its working capital essential to carrying out its obligations with contractors and subcontractors would be reduced;* that its operations "will be hampered and its business irreparably damaged by the reduction of its working capital"; and that it will be forced either to continue supplying customers directed to withhold payment, impairing its assets and the interests of stockholders or, in the alternative, to refuse making such shipments with the *asserted consequence of being unable to continue in business,* "inasmuch as a substantial portion of its market for its products presently is prime contractors with the United States and subcontractors thereof." [Italics supplied.]

The injury alleged was of the same type as that asserted here. This injury would have resulted from the direct withholding by the Government of $270,000.[22] In the instant case, there has been no such tangible deprivation as the withholding of any such

[22] The actual amount of excess profits determined was $1,265,000. Deduction of tax credits reduced the amount actually withheld to $270,000. 331 U. S. at 758.

substantial sum, or even a determination that any sum at all is due, but only the collateral effect that third parties might shut off credit because of the institution of the enforcement proceeding.

2. Appellee also alleged, as the basis of its request that the hearing before the Enforcement Commissioner be enjoined, that, if a disallowance certification was finally issued by the National Enforcement Commission at the end of the administrative procedure, it would be "* * * unable to attack such action before said agencies or before any court" (R. 7). This allegation, accepted by the court below (R. 37), was advanced as a sufficient showing of irreparable injury to warrant the issuance of an injunction.

Similar contentions have often been considered and rejected. However, before discussing the applicable principles, we wish to place before the Court the exact nature of the situation of which appellee complains. As indicated above, the hearing before the Enforcement Commissioner and the subsequent hearing on appeal before the National Enforcement Commission in themselves would have resulted in no order with compulsive impact upon appellee. If violations were found and appropriate disallowances fixed and certified, actions with compulsive effect upon appellee occurred only when, pursuant to the certification, the Commissioner of Internal Revenue made the appropriate tax disallowance. Whatever the precise form the Commissioner's action took, appellee then had available

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the usual remedies of the taxpayer, viz, a petition to the Tax Court (26 U. S. C. 272), operating as a stay of the tax collection until final decision of the court, or, after petition for a refund to the Commissioner (26 U. S. C. 322), a suit for a refund in a district court or in the Court of Claims (26 U. S. C. 3772).

We think it thus clear that appellee has access to an appropriate legal tribunal in which, as soon as compulsive action has been taken, it can seek and obtain the review to which it is entitled. And no earlier intervention by a court of equity is justified by reason of appellee's charge that Section 405 (b) contains no provision with regard to judicial review and that Section 6 of General Order No. 15, *infra*, p. 93, provides that disallowance determinations "* * * shall be final and not subject to review by The Tax Court of the United States or by any court in any civil proceeding."

That the failure of a statute specifically to provide for judicial review does not make such review unavailable is clear. *Fahey* v. *Mallonee*, 332 U. S. 245, 256; *Stark* v. *Wickard*, 321 U. S. 288; *Board of Governors of the Federal Reserve System* v. *Agnew*, 329 U. S. 441; Section 10, Administrative Procedure Act, 5 U. S. C. 1009. Review, of course, would be supplied where required by the Constitution. *Ng Fung Ho* v. *White*, 259 U. S. 276. Such review, however, is accorded at the termination of the administrative process, not before. *Fahey* v. *Mallonee, supra.* There would be even less reason

for requiring review at an intermediate stage if it be assumed that Congress meant to preclude all judicial review, as in *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297. In either event, whether judicial review is or is not available, it cannot take place before exhaustion of the administrative remedy. *Fahey* v. *Mallonee* so holds specifically, since it refused to interfere with the administrative process, although specifically not deciding "whether the determination of the Board in such proceeding is subject to any manner of judicial review."

In this case the statute creates no difficult problem, for it says nothing about judicial review, and would not appear to prohibit it by implication. Insofar as that portion of the regulation barring review is concerned, it either is lawful or it is not. If it is not, it is obviously separable from the remainder of the regulation—and this would leave the tax disallowance open to review in the Tax Court or other appropriate tribunal for review of tax determinations. If it is valid, it would bar determination by a court prior to the administrative proceeding as well as after.

In short, whatever review appellee is entitled to under the statute or the Constitution, it can obtain, before any governmental sanction applies, in the normal course of a suit to overturn the disallowance of a tax deduction by the Commissioner of Internal Revenue—if there should be such a deduction, which in turn depends on the outcome

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of the proceeding before the National Enforcement Commission which appellee has prevented from getting started.

II

SECTION 405 (b) OF THE DEFENSE PRODUCTION ACT PROVIDES FOR ADMINISTRATIVE DETERMINATION AS TO THE EXISTENCE OF VIOLATIONS OF WAGE STABILIZATION ORDERS AND ADMINISTRATIVE CERTIFICATION OF APPROPRIATE DISALLOWANCES

As indicated above, we feel that the court below erred in proceeding to a consideration of appellee's contentions with regard to statutory interpretation. Assuming, however, such issue to be available for decision, we submit that the decision below nevertheless must be reversed.

The statutory dispute turns on the meaning to be accorded Section 405 (b) of the Defense Production Act of 1950, derived from Section 5 of the Stabilization Act of 1942 (56 Stat. 767, 50 U. S. C. App. 965), which provides:

> No employer shall pay, and no employee shall receive, any wage, salary, or other compensation in contravention of any regulation or order promulgated by the President under this title. The President shall also prescribe the extent to which any wage, salary, or compensation payment made in contravention of any such regulation or order shall be disregarded by the executive departments and other governmental agencies in determining the cost

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> or expenses of any employer for the purposes of any other law or regulation.

The first sentence condemns the payment of wages or salaries paid in contravention of applicable stabilization regulations. The second sentence requires the President to prescribe the extent to which *"any"* unlawful wage payment may be disregarded by the executive departments in determining an employer's costs. This language read literally authorized the President, or the person or agency to which he delegated his functions,[23] to determine the extent of disallowance in the individual case, and not merely, as appellee contends, to prescribe general standards to be administered by the courts. Any doubt as to which of these two interpretations should be given the sentence in question is resolved by the background and history of the provision which, as will appear below, proves that the provision was intended to be construed as its administrators have construed it.

In any event, it is clear from the provision in question that the disallowances in individual cases were initially to be determined "by the executive departments and other governmental agencies," for that is what this sentence says. This means that the appellee's argument that the courts must in the first instance determine whether there has been a

[23] There is, of course, no question that the President can carry out this power by proper delegation, as he has done. Section 703 (a) of the Defense Production Act of 1950, 50 U. S. C. App. (Supp. V) 2153 (a), *infra*, pp. 82–83.

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violation is clearly inconsistent with the statutory scheme.

There may be a question as to the extent to which the administrative determination, whether made by one executive department or another or with or without a hearing, will ultimately be binding upon courts—whether the courts are to decide the issues *de novo,* to accept administrative determinations lawfully made and supported by substantial evidence, or to give the administrative decision even greater finality. Cf. (*Woodworth Co.* v. *Kavanagh,* 102 F. Supp. 9 (E. D. Mich.), affirmed, 202 F. 2d 154 (C. A. 6)). However this question as to the nature of the ultimate judicial determination is decided, the legality of the procedure for making the initial determination administratively would not be affected. This analysis of the problem also points up the prematurity of this case, for the reason stated at pages 26–40, *supra.*

A. THE LEGISLATIVE HISTORY OF SECTION 405 (B) PLAINLY SHOWS THAT CONGRESS INTENDED ADMINISTRATIVE ENFORCEMENT OF THE WAGE STABILIZATION PROGRAM

1. *Section 405 (b) is substantially identical with a provision in the World War II stabilization legislation which Congress knew had been administratively enforced.* The Defense Production legislation, introduced in the Eighty-first Congress, contained no provisions with regard to price or wage control. Such provisions were inserted as amendments in both Houses (S. Rept. 2250, 81st Cong.,

2d Sess., pp. 4–5, 20–21; 96 Cong. Rec. 11631, 11867 (House)) and became Title IV of the Act. In adopting the proffered amendment, Congress utilized much of the language that had appeared in World War II emergency legislation with full awareness of the experience developed during the administration of the legislation. See, *e. g.*, S. Rept. 2250, 81st Cong., 2d Sess., pp. 20–29. Section 405 (b), the provision here in issue, was specifically derived from Section 5 of the Stabilization Act of 1942, *supra*. To show the identity of the language of the two provisions we quote Section 5 of the 1942 Act (50 U. S. C. App. 965 (a)), with all new words contained in Section 405 (b)) of the 1950 Act italicized and all deletions shown in brackets:

> (a) No employer shall pay, and no employee shall receive, *any* wage[s] or salarie[s] *or other compensation* in contravention of *any* [the] regulation[s] *or order* promulgated by the President under this *title* [Act]. The President shall also prescribe the extent to which any wage, [or] salary, *or compensation* payment made in contravention of *any* such regulation[s] *or order* shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

The pertinent Senate Report states that Section 405 (b) "* * * adopts the language of the Stabilization Act of October 2, 1942, respecting the pen-

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alties to be applied for violations of the wage and salary stabilization program * * *." S. Rept. 2250, 81st Cong., 2d Sess., p. 39. The report further stated that the "* * * disallowance of illegal wage payments as a cost of doing business, for purposes of computing taxes, Government contract payments, and for purposes of establishing price ceilings, was an effective deterrent * * *." *Ibid.*

Under Section 5 of the 1942 Act, regulations were issued by the President on October 27, 1942 (7 F. R. 8748)[24] which served as the model for all regulations subsequently issued under that statute and under Section 405 (b) of the 1950 Act.[25] As examination of these regulations shows, Appendix, *infra,* pp. 87–89, Section 5 of the 1942 Act was implemented by a delegation to the National War Labor Board of authority to certify, after administrative procedure, appropriate disallowances. The procedure employed was almost identical to

[24] It should be noted that these regulations were not only signed by the Economic Stabilization Director but were approved by President Roosevelt. This unusual method of issuance of a regulation may have been deemed necessary by reason of the fact that Paragraph 4001.16 of the Regulations provided that any inconsistent provisions of Executive Order 9250, dated October 3, 1942 (7 F. R. 7871), were superseded.

[25] Amendments to these regulations were subsequently made to meet changing requirements during the administration of the emergency control program. See, *e. g.*, 8 F. R. 11960; 9 F. R. 14547; 10 F. R. 9628, 14820. None of these changes affected the problem with which we are here concerned, namely, the utilization of tax disallowances based upon administrative enforcement procedure.

that prescribed by the regulations involved in the present case. After the acquisition of initial experience in the enforcement field, a detailed procedural regulation was issued by the National War Labor Board on July 30, 1943. 9 F. R. 4681. Again, the administrative procedure there set forth, leading ultimately to the imposition of disallowance sanctions, is almost identical with that involved in the instant case.

The administration of the World War II wage stabilization enforcement program came to the attention of Congress on many occasions. For example, at appropriation hearings held on June 3, 1943, Mr. Lloyd K. Garrison, Executive Director and General Counsel of the National War Labor Board, in response to questions from the Committee Chairman, outlined in precise detail the entire enforcement program in connection with wage stabilization, including the procedure followed, the workload involved in the program, and the personnel needs for the program. Hearings before Subcommittee of the House Committee on Appropriations, 78th Cong., 1st Sess., on the National War Agencies Appropriation Bill for 1944, Part 2, pp. 667–668. Mr. Garrison there pointed out that alleged violations were heard by a Regional War Labor Hearing Board, that, after a full hearing, the employer possessed a right of appeal to the National War Labor Board, and that after termination of the appeal procedure a disallowance was certified in the event a violation was found.

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Again, at an appropriations hearing held on March 28, 1944, Mr. William H. Davis, Chairman of the National War Labor Board, testified, in response to questions, with regard to the Board's wage stabilization enforcement program, describing the Board's handling of enforcement by administrative hearings and disallowances. Hearings before Subcommittee of the House Committee on Appropriations, 78th Cong., 2d Sess., on the National War Agencies Appropriation Bill for 1945, Part 1, pp. 240–241. See, also, the testimony of Mr. Jesse Freidin, General Counsel of the Board, at the same hearing (pp. 303–304), in which Mr. Freidin explained that the Board's administrative procedure was its only method of civil enforcement. At an appropriations hearing held on April 23, 1945, Dr. George Taylor, Chairman of the National War Labor Board, personally submitted, in support of a request for funds for legal personnel, an extremely detailed report with regard to administrative enforcement of the wage stabilization program. Hearings before Subcommittee of the House Committee on Appropriations, 79th Cong., 1st Sess., on the National War Agencies Appropriation Bill for 1946, pp. 12–13. Dr. Taylor furnished statistics, covering the period October, 1942, through December 8, 1944, which showed the number of enforcement cases received, disposed of, and still pending before the National War Labor Board. For the period covered, 1,295

disallowances had been certified after the exercise by the Board of its "* * * authority to determine whether a violation exists * * *." *Ibid.*[26]

Under the wage stabilization enforcement program carried out pursuant to Section 5 of the 1942 Stabilization Act, approximately 68,233 cases resulting in disallowances of $19,018,820.19 were handled by the National War Labor Board from 1942 to 1945 (*Termination Report of the National War Labor Board,* Vol. I, pp. 437–441); 30,071 cases disallowing nearly $10,000,000 were processed by the National Wage Stabilization Board from January 1, 1946 to February 24, 1947 (*The National Wage Stabilization Board,* p. 230). Thereafter, Section 5 was administered by the Treasury Department, which imposed sanctions totaling approximately $700,000. *Annual Report of the Commissioner of Internal Revenue for 1948,* pp. 33–34; same for 1949, pp. 26–27.[27] Thus,

[26] It should be noted that during and subsequent to the period covered by the legislative material described above, Congress extended Section 5 on three occasions. Acts of June 30, 1944, 58 Stat. 632, 643; June 30, 1935, 59 Stat. 306; July 25, 1946, 60 Stat. 664. Reenactment by Congress in the light of its specific knowledge as to the administrative enforcement utilized under Section 5 of the 1942 Act must be taken as a ratification of that practice. Cf. *Hecht* v. *Malley*, 265 U. S. 144, 153; *Helvering* v. *Winmill*, 305 U. S. 79, 83; *Commissioner* v. *Flowers*, 326 U. S. 465, 469; *Shapiro* v. *United States*, 335 U. S. 1, 16; *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 308–311.

[27] For the general history of the enforcement of the Stabilization Act of 1942, including Section 5, see *Termination Report of the National War Labor Board*, Vol. I, pp. 428–441;

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under the 1942 program, nearly 100,000 proceedings took place and disallowances totaling nearly $30,000,000 were made.

In the light of this interpretation and administration of Section 5 of the 1942 Act, the conscious reutilization by Congress of its provisions and purpose in the 1950 Act can only be taken as the approval of the interpretation of the earlier statute. Cf. *Hecht* v. *Malley,* 265 U. S. 144, 153; *Helvering* v. *Winmill,* 305 U. S. 79, 83; *Commissioner* v. *Flowers,* 326 U. S. 465, 469; *Shapiro* v. *United States,* 335 U. S. 1, 16; *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 308–311.[28]

2. *Legislative events, since the enactment of Section 405 (b), fully demonstrate congressional awareness and approval of the enforcement program utilized under its provisions.*

(a) In June, 1951, Section 405 (b) was implemented by regulations which provided for administrative enforcement. *Supra,* p. 4. At that time,

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The National Wage Stabilization Board, January 1, 1946 to February 24, 1947, pp. 223–235; *Annual Report of the Commissioner of Internal Revenue, 1947*, pp. 62–63; *id.*, 1948, pp. 33–34; *id.*, 1949, pp. 26–27.

[28] Though not a part of the legislative history of Section 5, the Court's attention is directed to judicial acceptance of the administrative enforcement program. See *Troy Laundry Co.* v. *Wirtz*, 155 F. 2d 53 (C. A. 9), certiorari denied, 329 U. S. 723; see, also, *N. A. Woodworth Co.* v. *Kavanagh*, 102 F. Supp. 9 (E. D. Mich.), affirmed on the opinion of the District Court, 202 F. 2d 154 (C. A. 6); *Weather-Seal Mfg. Co.* v. *Commissioner of Internal Revenue*, 16 T. C. 1312, affirmed, 199 F. 2d 376 (C. A. 6); cf. *Hofferbert* v. *Anderson Oldsmobile Inc.*, 197 F. 2d 504, 508 (C. A. 4).

an amendment to provide judicial review of wage stabilization administrative enforcement was rejected. 97 Cong. Rec. 8555. At the same time, in connection with the extension of the price and wage control provisions of the Defense Production Act beyond June 30, 1951, Congress extended the wage control disallowance provisions to violations of price control regulations (Section 405 (a), as amended, 65 Stat 136),[29] and, in addition, created a similar authority to prevent fines, payments in compromise or by way of restitution, and other payments, from being charged back to the Government by way of income tax deductions (Section 409 (d), as added, 65 Stat. 136).[30] Since all appropriate methods of judicial enforcement had previously been available for the price control regulations, this addition of the tax disallowance sanction previously applicable only to the wage stabilization regulations shows plainly that Congress believed that the latter constituted a different means of enforcement. A detailed discussion of the addition of administrative disallowance as a separate price enforcement sanction is set forth at pages 61–64, *infra*.

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[29] Cf. *Commissioner of Internal Revenue* v. *Weisman*, 197 F. 2d 221 (C. A. 1); *Hofferbert* v. *Anderson Oldsmobile Inc.*, 197 F. 2d 504 (C. A. 4), arising under the 1942 legislation.

[30] H. Rept. 639, 82d Cong., 1st Sess., p. 40; see, also, Letter of Deputy Attorney General Peyton Ford to the Chairman of the House Committee on Banking and Currency dated June 4, 1951; Hearings before the Committee on Banking and Currency, House of Representatives, 82d Cong., 1st Sess., on H. R. 3871 (Defense Production Act Amendments of 1951, pp. 652, 653).

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(b) By Section 712 of the Defense Production Act of 1950, 64 Stat. 820, 50 U. S. C. App. (Supp. V) 2162, Congress formalized the experience gained during and after World War II in connection with the need and desirability of close and constant contact with the administration of emergency control programs. Section 712 provided for the creation of a Joint Committee on Defense Production whose function it was "* * * to make a continuous study of the programs authorized by this Act" to aid the standing committees with jurisdiction over any part of such programs, and to report and recommend from time to time to both Houses of Congress. The Joint Committee was specifically empowered to require consultations at any time by officials or agencies with regard to activities under programs authorized by the statute.

The Joint Committee dealt, of course, with every aspect of the defense program and its published reports and submissions necessarily ranged over a wide area. However, as early as October 1951, the Joint Committee transmitted to Congress a report by the Wage Stabilization Board, prepared at the Committee Chairman's request, which concisely described the administrative enforcement program. Referring to the initial establishment of the National Enforcement Commission, the report stated that "* * * the enforcement commission will sit in a quasi judicial capacity to determine whether there have been violations and what penalties should be invoked. * * *." *First Annual Report of the Joint Committee on Defense Production,* S. Rept. 1040,

82d Cong., 1st Sess., p. 101. In the Joint Committee's Second Annual Report submitted in October 1952, there is contained a report by the Wage Stabilization Board, prepared at the Committee's Chairman's request, which describes in great detail the administrative enforcement procedure, precisely the same as that here in issue, followed in connection with violations of wage stabilization orders. S. Rept. 3, 83d Cong., 1st Sess., pp. 112–113.

(c) The Defense Production Act Amendment of 1952, 66 Stat. 296, approved on June 30, 1952, extended the operation of the price and wage control provisions of the statute until April 30, 1953. Prior to this extension, administrative enforcement of Section 405 (b) had been implemented by the issuance of a new and very detailed regulation, General Order No. 15, pp. 5–8, *supra*. Full congressional awareness of the practice under the statute is evidenced by the Conference Report on the 1952 Amendment which states (H. (Conference) Rept. No. 2352, 82d Cong., 2d Sess., p. 24):

> The conference substitute is not intended to preclude the Board from, *as at present, enforcing* wage stabilization regulations and policies. [Italics supplied.]

(d) Again, during hearings on a Supplemental Appropriations Act of 1954 (67 Stat. 418), the complete familiarity of both Houses of Congress with administrative enforcement under Section 405 (b) was once more demonstrated. A Presidential request for funds (H. Doc. 176, 83d Cong., 1st Sess.,

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pp. 4–5), including $290,000 for salaries needed in the liquidation of the Economic Stabilization Agency, was under consideration. Mr. Arthur S. Flemming, then Director of the Economic Stabilization Agency, presented testimony at both House and Senate hearings [31] on the item on the assumption that the Agency would be able to liquidate all of its affairs, including pending proceedings, prior to its physical termination on October 31, 1953. In discussing this prospect, colloquies between Mr. Flemming and members of the committees demonstrate clearly a familiarity with the administrative procedure utilized in wage stabilization violation matters.[32]

In the testimony before the House Committee, Mr. Flemming expressly referred to the steps taken in connection with enforcement of the wage and salary stabilization program, *viz,* the hearings before an Enforcement Commissioner, the findings to

[31] Hearings before the Subcommittees on Appropriations, House of Representatives, 83d Cong., 1st Sess., on H. R. 6200 (hereafter referred to as House Hearings) pp. 439–441. Hearings before the Committee on Appropriations, United States Senate, 83d Cong., 1st Sess., on H. R. 6200 (hereafter referred to as Senate Hearings) pp. 423–431.

[32] It might here be noted that, beginning in 1952, the National Enforcement Commission gave wide circulation to its decisions and that a considerable proportion of these was reported by Labor Law Services. See, *e. g.*, Bureau of National Affairs, Labor Relations Reporter, Wage and Salary Controls Binder 7, 100: 1151–1200z 52, reporting 45 of the 132 written opinions of the National Enforcement Commission.

be made by the latter, and eventual appeals to be handled by the National Enforcement Commission.[33] Similarly, the discussions at the Senate hearings (pp. 423–431) disclose that the Senators were fully informed of the administrative method of enforcing wage violations. These hearings, however, acquire added importance in relation to the correct congressional interpretation of the statute, since, as far as the Senators present were concerned, the testimony did not deal with an abstract and remote topic of administrative procedure but with this very case.

A Mr. Holland was permitted to testify on behalf of appellee concerning the instant proceedings. As a result, the Committee was advised of many, if not all, of the procedural details of this case in its administrative and judicial phases.[34] Most significant perhaps is the circumstance that Mr. Holland, recognizing the full familiarity of the Committee with the administrative means of enforcement, did not challenge their propriety. To the contrary, when asked by Senator Cordon who presided over the hearing,[35] whether he challenged the power of the Economic Stabilization Agency to inquire into alleged wage violations, he conceded that the instant proceeding was properly brought and that his only objection to the second (the salary) case[35a] was that it had been brought after Title IV

[33] House Hearings, p. 441.
[34] Senate Hearings, pp. 424, 426–427.
[35] Senate Hearings, p. 377.
[35a] See p. 26, *supra.*

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had expired.[36] In answer to a question by Senator Thye, Mr. Holland conceded that the basic motive of his appearance before the Committee was to induce the Committee to deny to the Economic Stabilization Agency the funds required for the completion of enforcement proceedings.[37] Mr. Holland sought to explain his request on the ground that such enforcement would result in discrimination against those wage regulation violators who had obtained injunctions and thus prevented the completion of the enforcement proceedings prior to the expiration of the stabilization program.[38] Senator

[36] "Senator CORDON. You do not question but what it was all right for the Economic Stabilization Agency at that time to inquire into the particular matter, do you?

"Mr. HOLLAND. Yes, sir.

"The first one is all right; the second one came during what is the liquidation period. And we do not believe it was appropriate for the Agency to start new cases. Our idea of liquidation would certainly be limited to the cases they had" (Senate Hearings, p. 427.)

[37] "Senator THYE. What you are asking us to do is to deny them the funds so that they cannot proceed further with the hearing?"

"Mr. HOLLAND. Let me state it differently.

"Senator THYE. Is that the point?

"Mr. HOLLAND. That is the basic point.

"Senator THYE. Is that not precisely what you are asking us?

"Mr. HOLLAND. The reason that we are asking it is that we think what the money is going to be used for will result in just handling a handful of cases.

"Senator CORDON. Your answer, then, is yes, is it not?

"Mr. HOLLAND. Yes, sir." (Senate Hearings, pp. 428–429.)

[38] Senate Hearings, pp. 428–431.

Cordon indicated on two occasions that he could not see any merit in this contention.[39]

At the conclusion of the hearings, the Senate Committee refused to appropriate the $290,000 for the liquidation of the Economic Stabilization Agency. This denial of the funds, however, was not based on the theory that the enforcement proceedings were unauthorized under the statute. On the contrary, it was plainly the position of the Committee that enforcement was to be completed. Its report stated that it was

> the sense of the committee that pending cases should be turned over to the Department of Justice for review so that the agency will not be continued by a continuation of these suits. [S. Rept. No. 677, 83d Cong., 1st Sess., p. 17.]

And while the Senate agreed with its committee and struck the appropriation from the bill (99 Cong.

[39] "Senator CORDON. You do not want any cases tried, no matter how flagrant, how long continued; is that the proposition?

"Mr. HOLLAND. Yes, sir.

"Senator CORDON. If so, I want to tell you that the chairman of the committee disagrees with you entirely." (Senate Hearings, p. 429.)

And again:

"Mr. HOLLAND. All we are after is equal treatment, and we do not believe we are getting it. That is why we are here today.

"Senator CORDON. I do not agree with you with respect to equal treatment. I think equal treatment is applying to equal cases. But equal treatment that every case must be prosecuted whether it is a frivolous case or not, I cannot agree with you." (Senate Hearings, p. 431.)

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Rec. (Daily Ed., July 30, 1953), p. 10705), the Conference Report (House Conference) Rept. No. 1090, 83d Cong., 1st Sess., p. 5, Amendment Nos. 76, 77) restored the funds for the liquidation of the Economic Stabilization Agency, concededly to be used in part for the winding up of pending wage enforcement proceedings.

Appropriation of funds in these circumstances and after full disclosure and discussion of the administrative methods employed, plainly manifests a Congressional intention to approve and ratify the existing system of administrative proceedings to enforce the disallowance sanction of section 405 (b). *Brooks* v. *Dewar,* 313 U. S. 354, 361; *Fleming* v. *Mohawk Co.,* 331 U. S. 111; *Norwegian Nitrogen Co.* v. *United States,* 288 U. S. 294, 308–315.

B. THERE IS NO VALIDITY TO ATTEMPTED CONSTRUCTIONS OF SECTION 405 (b) DESIGNED TO PREVENT ADMINISTRATIVE HEARINGS AND ENFORCEMENT

Putting to one side the compelling materials discussed above and assuming the statutory issue in this case to be one for resolution solely by the construction of language, the limiting interpretation urged by appellee and accepted by the court below cannot be sustained. As stated above, the court below held that only district courts could impose penalties for violations of the Defense Production Act although the President concededly could issue binding certifications of disallowance within the executive branch. The scope

of this interpretation of the statute is not entirely clear. Apparently, it could mean one of several things.

1. The court below may have intended to hold that the President's power under Section 405 (b) lay in the issuance of binding general instructions within the executive department. If this is so, there can be no question but that the President could have instructed the Treasury generally to disallow illegal wage payments, leaving to the Treasury the specific application of this general instruction.[40] In such case, the Treasury could have made disallowances for tax purposes and an employer's only judicial remedy would be the same as it is under the procedure presently in force, namely, a suit for a refund or a suit in the Tax Court.[41] If this is the purport of the interpretation below, its decision seems to have done no more than to condemn the careful intermediate hearing procedure afforded to employers by the procedure under Section 405 (b)—which gives greater protection than the normal Treasury procedure.

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[40] It should be noted that, even in the absence of express command, it has always been the implied command of the taxing statute that illegal expenditures or those contrary to public policy should not be available as deductions or offsets to diminish the tax liability of the wrongdoer. *Textile Mills Corp.* v. *Commissioner*, 314 U. S. 326; *Commissioner* v. *Heininger*, 320 U. S. 467, 473.

[41] In its Motion to Affirm hereinbefore filed, p. 6, appellee appears to insist on the availability of this refund suit remedy.

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2. Although the court enjoined the administrative proceeding, it may be that it was basically objecting to the finality of what it called a penalty imposed by the administrative agencies rather than by the courts. But as we have stated earlier, the administrative procedure is not incompatible with subsequent judicial review. Whatever review appellee is legally entitled to will be available after any tax disallowance is made by the Treasury. Objections to administrative finality should not bar the otherwise entirely legitimate administrative proceeding.

The court below may have meant that the district court's role should occur at some point between the President and the imposition of a tax disallowance. Under this interpretation, the court would apparently become part of the administrative process leading to disallowance, passing upon complex and technical questions arising under wage stabilization regulations, ascertaining the appropriate amount of the disallowance to be made, and, presumably, issuing a directive to the Treasury.[42]

We will put to one side the constitutional difficulties created by this merging of district courts into the administrative process. It is sufficient to say there is nothing in the language of Section

[42] Though the court below stated that only district courts could impose penalties, it does not seem to have questioned the fact that administrative disallowance, appropriate in the circumstances of each particular case, was the available and appropriate sanction.

405 (b) itself which gives any support to the interpretation. On the contrary, the second sentence, taken alone, with its reference to disallowance by the "executive departments" plainly envisages administrative action. See pp. 42–43, *supra*.

The court below found the limitation by reference to those provisions in Section 706 (b) of the 1950 Act (*infra*, p. 84) which describe generally, in language plainly permissive, the jurisdiction of district courts to hear actions brought to enforce duties created under the Act. This general jurisdictional provision would not be sufficient to require Section 405 (b) to be given an interpretation contrary to that so clearly supported by its history.

The notion that this provision acts as a limitation upon Section 405 (b) seems to be derived from an argument, accepted by the court below, that the district court jurisdiction language of Section 706 (b) was novel in the 1950 Act and had no counterpart in the 1942 price and wage control legislation.[43] The suggestion is unsound. In the first place, the provisions of Section 706 closely resemble those of Section 205 of the 1942 Emergency Price Control Act, (*infra*, pp. 78-79. Section 205 (a) of the earlier statute provided for injunctive relief, Section 205 (b) for criminal

[43] Appellee's purpose in this contention was to attempt to sever the construction of Section 405 (b) from a consideration of Section 5 of the 1942 Stabilization Act and its clearly established meaning.

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penalties. And Section 205 (c) gave the District Courts jurisdiction of all proceedings under Section 205. The immediately subsequent paragraphs in 205 provided for suits for damages against price control violators. Section 706 (a) of the 1950 Act, like Section 205 (a), provided for injunctive relief. Section 706 (b), gives the District Courts jurisdiction over violations of the Act of all sorts; and although its wording is different, the scope is substantially the same as the prior Section 205 (c).

Secondly, it should be pointed out that Title IV of the 1950 Act contains its own remedial provisions which almost exactly parallel those contained in the earlier Section 205. Title IV was not a part of the original bills which became the Defense Production Act, although Section 706 was. When Title IV was added, it included Section 409, paragraphs (a) and (b) of which provided for injunctive and criminal remedies and paragraph (c) for suits for damages.

Clearly all these provisions together cover the same ground as did the former Section 205. There is thus no basis for asserting that Section 706 (b) was intended to constitute a greater limitation upon the subsequently inserted Section 405 (b) than were the similar provisions of the 1942 Act.

Any doubt that administrative enforcement in wage stabilization cases coexisted with the district court enforcement procedure utilized in price cases

is dispelled, we submit, by the manner in which Congress added administrative enforcement as a price violation sanction in 1951. See *supra*, p. 50. At that time, Section 405 (a), *infra*, pp. 80–81 was amended by the addition of language identical with that contained in connection with wage stabilization administrative enforcement, in Section 405 (b). In explaining the purpose of this amendment at the request of the Office of Defense Mobilization, the Deputy Attorney General stated that it was patterned after existing language in Section 405 (b) which in turn was based upon Section 5 of the 1942 Stabilization Act, both of which permitted administrative disallowances as to wage and salary payments made in violation of applicable stabilization regulations or orders. Hearings before the Committee on Banking and Currency, House of Representatives, 82d Cong., 1st Sess., on H. R. 3871 (Defense Production Act Amendments of 1951), p. 653. He stated that "* * * no similar authority presently [was] applicable to payments made in violation of price stabilization regulations or orders * * *" and that the "instant amendment would place payments illegal under price-stabilization regulations on the same basis with respect to their disallowance for tax purposes as presently are payments illegal under wage- and salary-stabilization regulations." *Ibid.* This new and additional enforcement sanction in connection with violations of price regulations or orders was accepted in legislation which also dealt with alterna-

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tive methods of price enforcement, *i. e.*, by district court proceedings. H. Rept. 639, 82d Cong., 1st Sess., p. 40.

That the administrative enforcement procedure provided in wage regulation cases by Section 405 (b) and in price regulation cases by Section 405 (a) thus amended is entirely separate from and independent of district court proceedings is illustrated by the action taken by Congress in amending Section 409, *infra*, pp. 81–82, the section dealing with district court proceedings. This amendment was also explained by Deputy Attorney General Ford at the request of the Office of Defense Mobilization. In addition to making available administrative enforcement by amending Section 405 (a), Section 409 was amended so as to provide for the certification for tax disallowance of fines paid as the result of criminal proceedings or of payments made in compromise or by way of restitution in price violation cases. Hearings before Committee on Banking and Currency, 82d Cong., 1st Sess., on H. R. 3871, p. 653; Section 409 (d), *infra*, p. 82. Thus, where Congress intended administrative disallowance to be utilized in connection with court proceedings or payments made to avoid judgments, it did so specifically and then only in connection with price violation cases. It should be observed that the disallowance amendment under Section 409 was not viewed as an initial enforcement technique against violations of stabilization regulations or orders, as were the disallowance provisions con-

tained in Section 405, but rather was seen as a method of protecting the Government from being charged, by way of tax deduction, with amounts paid as compromise or restitution. Hearings, *supra,* pp. 653–654.

It is clear from all of the above that the administrative disallowance procedure is a separate enforcement device, entirely independent of enforcement by way of district court proceedings, Appellee's argument to the contrary is no more than a strained attempt, at the eleventh hour, to avoid proper inquiry into the question of violations alleged to have been committed by it during the substantive wage control period.

III

THE TERMINATION OF THE PERIOD OF WAGE STABILIZATION CONTROL DID NOT AFFECT THE POWER TO CONDUCT AND COMPLETE ENFORCEMENT PROCEEDINGS WITH REGARD TO VIOLATIONS OCCURRING DURING THE CONTROL PERIOD

By the 1952 amendments to the Defense Production Act (June 30, 1952, 66 Stat. 296, 306), Congress provided for the termination of control programs at the close of April 30, 1953.[44] As this termination date approached, a number of employers for the first time sought to enjoin hearings scheduled to consider violations alleged to have taken place during the life of the program.

[44] Substantive control was suspended on February 6, 1953, by Executive Order No. 10434. 18 F. R. 809.

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As a result a number of the proceedings could not be brought to completion before the program expired on April 30, 1953.[45] Here, the holding of an administrative hearing originally scheduled to be held February 24, 1953, has been suspended as the result of court action instituted by appellee on February 13, 1953. *Supra,* pp. 12–14.

In this case, as in several of the other injunction proceedings directed against wage stabilization enforcement hearings, it was suggested that the power to hold a hearing had lapsed. Here, appellee alleged that the "* * * expiration, on April 30, 1953, of Title IV of the Act, relating to wage stabilization, terminated all authority conferred thereunder, and thus terminated any power or authority * * * to determine whether or not wage or salary payments had been made in contravention of the Act or to determine the extent to which any such wage or salary payments should be disallowed for the purpose of

[45] We have been advised by the Office of Defense Mobilization that, in addition to the proceeding involved the appellee herein, 19 enforcement proceedings are still pending as the result of litigation in which the administrative proceedings were sought to be enjoined. In some of these proceedings, for example, in the appellee's salary case (24 CCH Labor Law Reporter No. 67832), the effort to obtain an injunction was unsuccessful, but the holding of the administrative enforcement hearing was delayed during the period of time consumed by the litigation. Proceedings in a similar situation are those which involve *Sierra Drawn Steel Corp.* v. *Gregory* (115 F. Supp. 545 (S. D. Cal.)), and *Carson Park Builders* v. *Allen* (S. D. Cal. (Civil No. 15473–WM)).

other laws or regulations * * *" (R. 29). The court below did not pass on this lapse of power contention but stated that the claim appeared to have "* * * substantial merit * * *" (R. 36). Although the point was thus not decided by the court below, we believe it necessary to discuss the matter, in order to show that the case is not moot.[46]

We are here dealing with temporary legislation. Where such legislation expires, the broad principle to be applied is specifically set forth in the General Savings Statute, 1 U. S. C. (Supp. V) 109, namely, that such expiration will not prevent enforcement as to previously incurred liabilities in the absence of an express provision in the temporary legislation to the contrary. Here, as we shall show, there is no such express provision. On the contrary, there is plain indication that Congress contemplated the continuation and completion of enforcement proceedings with regard to price and wage stabilization violations which had allegedly occurred during the substantive control period.

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[46] Appellant, Phil C. Neal, the Enforcement Commissioner appointed for the taking of evidence in the instant case (*supra*, pp. 12, 14), is now on the staff of the Office of Defense Mobilization, ready to conduct a hearing when and if the injunction is lifted. Accordingly, there is still a party within the jurisdiction of the district court.

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A. THE GENERAL SAVINGS STATUTE

The General Savings Statute provides, in part (1 U. S. C. (Supp. V) 109):

> * * * The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so *expressly* provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. [Italics supplied.]

This language clearly applies to appellee's attempt to escape liability imposed by the Defense Production Act.

The prime purpose of the General Savings Statute is to prevent—in the absence of a deliberate legislative directive—the expiration of a statute from acting as a legislative pardon for violations of duties imposed by the statute. *United States* v. *Allied Oil Corp.*, 341 U. S. 1, 5; *Fleming* v. *Mohawk Co.*, 331 U. S. 111. And this provision extends to liabilities created by regulations issued pursuant to the statute. *United States* v. *Allied Oil Corp.*, 341 U. S. 1, 5; *Fleming* v. *Mohawk Co.*, 331 U. S. 111; *United States* v. *Carter*, 171 F. 2d 530 (C. A. 5); *Bowen* v. *United States*, 171 F. 2d 533 (C. A. 5); cf. *United States* v. *Fortier*, 342 U. S. 160, 161, fn. 3. The policy and purpose of

the statute thus cover precisely the instant controversy.

In the light of the policy and purpose, the statute has been definitively construed on technical points similar to those which appellee raises as objections to its coverage here. Thus, as this Court has recently pointed out, the statute preserves not merely remedies but the necessary means to ascertain and impose the remedy. *De La Rama S. S. Co.* v. *United States,* 344 U. S. 386, 389–390, in which the Court stated:

> This case demonstrates the concrete, dollar-and-cents importance of saving the statute and not merely the liability. Indeed, in this case the liability under the statute is not wholly saved unless that portion of the statute which gives the District Court jurisdiction also survives. * * * where the object of Congress was to destroy rights in the future while saving those which have accrued, to strike down enforcing provisions that have special relation to the accrued right and as such are part and parcel of it, is to mutilate that right and hence to defeat rather than further the legislative purpose.

And the necessary means to enforcement can consist of appropriate administrative proceedings. *National Labor Relations Board* v. *National Garment Co.,* 166 F. 2d 233, 236 (C. A. 8), certiorari denied, 334 U. S. 845; *National Labor Relations Board* v. *Gate City Cotton Mills,* 167 F. 2d 647, 649 (C. A. 5); *National Labor Relations Board* v.

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Edward G. Budd Mfg. Co., 169 F. 2d 571, 575 (C. A. 6), certiorari denied, 335 U. S. 908; *Eastern Coal Corp.* v. *National Labor Relations Board*, 176 F. 2d 131, 137 (C. A. 4).

Finally, the liquidation of the emergency program from which the 1950 Act was derived has been held to allow continuation of administrative enforcement by a successor agency. *Fleming* v. *Mohawk Co.*, 331 U. S. 111, 113–119, in which the successor was held authorized to issue administrative subpoenas after termination of price controls.

Although Title IV of the Defense Production Act contains the wage control provisions which expired on April 30, 1953, and the agencies created under that title were terminated on October 31, 1953, the President has delegated to the Director of the Office of Defense Mobilization their function "of conducting administrative proceedings under Title IV of the Act, including the conclusion of those instituted pursuant to section 405." Executive Order No. 10494, 18 F. R. 6585, October 14, 1953. The existence of the Office of Defense Mobilization does not rest upon the Defense Production Act. The specific statutory provisions utilized in this delegation are contained in Title VII which continues until June 30, 1955. See *infra*, p. 70 *et seq.* The situation is now legally the same as if the President had delegated the tax disallowance functions to the Treasury or any other permanent agency. This method of enabling administrative enforcement proceedings to be completed was authorized by the provision in Sec-

tion 703, which is still in effect, which permits the President to delegate the authority conferred upon him.

For the above reasons, the General Savings Statute, in the absence of any express direction by Congress waiving its provisions, is plainly applicable here, and there is an agency lawfully in existence which has authority to wind up the administrative enforcement program.

B. THERE IS NO EXPRESS DECLARATION BY CONGRESS THAT WAGE STABILIZATION ENFORCEMENT PROCEEDINGS WERE TO LAPSE WITH THE TERMINATION OF THE SUBSTANTIVE CONTROL PROGRAM, NOR IS THERE ANY BASIS FROM WHICH SUCH PURPOSE SHOULD REASONABLY BE INFERRED

As we will show, there has been no express statement of intention by Congress that the winding up of the price and wage stabilization substantive program should act as an automatic pardon with regard to accrued violations. Neither appellee nor the court below has referred to any statute which contains an express provision waiving liability for past unlawful conduct, such as is necessary if the General Savings Statute is not to apply.

Appellee relies upon Section 717 (a) (*infra*, p. 86) which provides that "* * * all authority conferred * * *" under Title IV, the price and wage control title, terminates on April 30, 1953, and Section 717 (b) (3) which provides that any agency created under the Defense Production Act "* * * may be continued in existence for purposes of liquidation for not to exceed six

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months after the termination of the provision authorizing the creation of such agency," *i. e.*, six months after April 30, 1953. But these are general termination provisions which do not contain the express, or even an implied, waiver of liabilities such as is necessary to escape the effect of the General Savings Statute. These provisions do not deal at all with the subject of liability or non-liability for past unlawful conduct.

Appellee also refers to the special savings clause in Section 706 (b), which preserves "* * * any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title." Appellee argues that the failure of this provision to mention administrative enforcement proceedings shows that only judicial remedies were intended to be preserved. As we shall show, this clause, read in the light of the background from which it was derived, manifested a contrary intention. But, in any event, it certainly is not an express provision that any past liabilities shall be released, such as is necessary if it is to be read as waiving the application of the General Savings Statute. Read most narrowly, it repeats the provisions of that statute without using quite as broad language, but it does not purport to wipe out *any* liabilities which would be saved by the General Statute.

We shall now explain why we believe that the provisions in question were affirmatively intended

to preserve liabilities enforced in the first instance by administrative action.

a. As in connection with all provisions of the 1950 Act, the savings language of Section 706 (b) must be read in context and in the light of the World War II legislation and experience. Section 1 (b) of the Emergency Price Control Act of 1942, 56 Stat. 23, like Section 706 (b), preserved "* * * any proper suit, action, or prosecution * * *." As we have already shown, Section 5 of the Stabilization Act of 1942, the section covering wage stabilization enforcement during the World War II period and on which Section 405 (b) of the 1950 Act was modeled, was enacted subsequent to, and amendatory of, the price control legislation. The Stabilization Act had no specific savings clause. The savings language available in Section 1 (b) was utilized in Executive Order 9801 (11 F. R. 13435) which, in suspending wage and price controls, specifically preserved "* * * any proper suit, action, or prosecution * * *." Pursuant to this savings language, wage stabilization enforcement, by means of administrative enforcement procedures, was carried on to its completion of 1949. *Annual Report of the Commissioner of Internal Revenue*, 1947, pp. 62–63; *id.*, 1948, pp. 33–34; *id.*, 1949, pp. 26–27.[47]

[47] The tax deduction disallowance function with regard to violations of the World War II wage stabilization program was transferred to the Department of Treasury on December 12, 1946. Section 10 (b) of Executive Order 9809, 11 F. R. 14281.

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As we have already shown, *supra*, pp. 43–45, the 1950 legislation was specifically derived from the 1942 legislation and experience. This, of course, is a factor which strongly underscores the applicability herein of the General Savings Statute. With the 1942 legislation and experience as a model, it must be taken as established that any purpose in Congress to deviate from the familiar pattern of administration would be express. Here, on the contrary, all indications are that Congress intended to follow and permit the same administration. The savings language of Section 706 (b), referred to above, was taken from Section 1 (b) of the 1942 price control legislation. As we have already shown, *supra*, p. 61, Section 706 (b) appeared in the defense production legislation prior to the addition of Title IV which covered price and wage control. Here, as in the 1942 situation where a similar time sequence occurred with regard to Section 5 of the Stabilization Act, no change was made in the savings language. But the omission technically to adjust the savings language of Section 706 (b) so as to spell out coverage of the administrative enforcement procedure made available by Section 405 (b) cannot be taken as any evidence of a congressional intent to differentiate between such enforcement proceedings and those deemed appropriate in price stabilization cases. The history of the language shows that Congress assumed that it would extend to administrative enforcement as well as to strictly judicial remedies.

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b. There is specific evidence to demonstrate congressional understanding that the termination of substantive controls on April 30, 1953, did not cause a lapse of the enforcement power. As we have shown above, at supplemental appropriations hearings held by the Senate Committee on July 23, 1953 and by the House Committee on June 19, 1953, the power to complete the wage stabilization enforcement program was taken for granted. See *supra*, pp. 52–57.[48] And the Senate Committee, in opposing funds for this purpose, *inter alia*, to the Economic Stabilization Agency, indicated beyond question an understanding that the enforcement program was to be completed in its recommendation that pending cases be transferred to the Department of Justice.

c. It has also been suggested that the physical dissolution, on October 31, 1953, of the Economic Stabilization Agency and its component parts, created to correlate the administration of the entire control program during its life, marked the cutoff date for enforcement proceedings. Section 717 (b) (3) provided that any agency created under the Defense Production Act "* * * may be continued in existence for purposes of

[48] It might here be noted that these supplemental appropriations hearings were concerned chiefly with the question of funds for the Economic Stabilization Agency, including funds for the completion of enforcement proceedings, on the assumption that the completion of the enforcement program could be achieved by that Agency before it closed its doors. They probably would have been apart from the injunction suits.

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liquidation for not to exceed six months after the termination of the provision authorizing the creation of such agency", *i. e.*, six months after April 30, 1953.

No necessary relationship exists between the desire of Congress to wind up the elaborate and expensive machinery created to administer the control program and the continuation *vel non* of the power to complete enforcement proceedings with regard to past violations. Here again, reference may be made, in ascertaining congressional purpose, to the World War II experience and to the fact that enforcement functions were carried out after the specially created emergency agencies had been physically dissolved. See Executive Order 9809, December 12, 1946, 11 F. R. 14281, which transferred wage stabilization enforcement to the Treasury and disposed of many other enforcement functions among various other agencies. That the same pattern was expected to be followed in 1953 is specifically evidenced by the supplemental appropriations hearing material to which we had already adverted. *Supra*, pp. 52–57. There, Congress plainly understood that the enforcement program would be completed, if possible, by the Economic Stabilization Agency but, if necessary, by other agencies, for example, by the Department of Justice. *Supra*, p. 56. Reference might also here be made to a statement by Mr. Flemming, testifying in support of the President's request for funds, that, if the Economic Stabilization Agency

was unable to complete the administrative disallowance proceedings, the function of completing them would have to be shifted, after the dissolution of that agency, to some other agency. Hearings before Senate Committee on Appropriations, 83d Cong., 1st Sess., on H. R. 6200, p. 431.

Apart from these considerations, there are clear statutory indications that the power to enforce was not tied to the provision with regard to the physical dissolution of the Economic Stabilization Agency. For example, broad and continuing investigatory powers are granted to the President, in whom the basic power to enforce is lodged, by Section 705, *infra*, pp. 83–84, "* * * while this Act is in effect and *for a period of two years thereafter* * * *", which enable the President to issue regulations or subpoenas, to obtain information or require reports, and to administer oaths and take sworn testimony wherever, in the President's discretion, such action is necessary "* * * to the enforcement * * *" of the Act or regulations or orders issued thereunder. There can be little doubt that this provision itself fully authorizes the President or his agent to conduct the administrative hearings involved in this case. The expiration of the agency specially created to administer the control program during its life meant no more, in the light of this provision, than that the power to enforce reverted to the President. In turn, the President is specifically authorized to delegate that power. Section 703, *infra*, p. 82, which, like Section 705, is presently

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effective,[49] authorizes delegation by the President.

The result reached by this analysis of the pertinent statutory provisions is fully supported by the principles contained in this Court's decisions in the *Allied Oil* and *Mohawk* cases. Absent the specific provisions, the same result would be reached by application of the General Savings Statute. *De La Rama S. S. Co.* v. *United States, supra.* The power to conclude the enforcement program as to price and wage stabilization violations resides in the President and has been exercised by him by means of appropriate delegations. Price enforcement is being processed to completion by the Department of Justice. Wage and salary stabilization enforcement is lodged in the Office of Defense Mobilization. Executive Order 10494, October 14, 1953, 18 F. R. 6585.

CONCLUSION

For the above reasons it is respectfully submitted that the judgment below should be reversed.

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[49] Both of these sections are preserved in existence until June 30, 1955. See Section 717 (a), *infra*, p. 86.

APPENDIX

1. Section 205 of the Emergency Price Control Act of 1942, 56 Stat. 23, 33, provides in pertinent part:

> (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.
>
> (b) Any person who willfully violates any provisions of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.
>
> (c) The district courts shall have jurisdiction of criminal proceedings for violations

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of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

2. The Defense Production Act of September 8, 1950, 64 Stat. 798, as amended by the Defense Production Act Amendments of 1951, 65 Stat. 131, 50 U. S. C. App. Supp. V 2061–2166; of 1952, 66 Stat. 296, and of 1953, 67 Stat. 129, provides in pertinent part:

SECTION 403 (50 U. S. C. APP. (SUPP. V) 2103)

(a) At such time as the President determines that it is necessary to impose price and wage controls generally over a substantial portion of the national economy, he shall administer such controls, and rationing at the retail level of consumer goods for household and personal use under authority of Title I of this Act (when and to the extent that he exercises such authority), through a new independ-

ent agency created for such purpose: *Provided, however,* That the President shall administer any controls over the wages or salaries of employees subject to the provisions of the Railway Labor Act, as amended, through a separate board or panel having jurisdiction only over such employees. Such agency may utilize the services, information, and facilities of other agencies and departments of the Government, but such agency shall not delegate enforcement of any of the controls to be administered by it under this section to any other agency or department.

* * * * * * *

SECTION 404 (50 U. S. C. APP. (SUPP. V) 2104)

In carrying out the provisions of this title, the President shall, so far as practicable, advise and consult with, and establish and utilize committees of, representatives of persons substantially affected by regulations or orders issued hereunder.

SECTION 405 (50 U. S. C. APP. (SUPP. V) 2105)

(a) It shall be unlawful, regardless of any obligation heretofore or hereafter entered into, for any person to sell or deliver, or in the regular course of business or trade to buy or receive, any material or service, or otherwise to do or omit to do any act, in violation of this title or of any regulation, order, or requirement issued thereunder, or to offer, solicit, attempt or agree to do any of the foregoing. The President shall also prescribe the extent to which any payment made, either in money or property, by any person in violation of any such regulation, order, or requirement shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses

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of any such person for the purposes of any other law or regulation, including bases in determining gain for tax purposes.[1]

(b) No employer shall pay, and no employee shall receive, any wage, salary, or other compensation in contravention of any regulation or order promulgated by the President under this title. The President shall also prescribe the extent to which any wage, salary, or compensation payment made in contravention of any such regulation or order shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation.

SECTION 409 (50 U. S. C. APP. (SUPP. V) 2109)

(a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 405 of this title, he may make application to any district court of the United States or any United States court of any Territory or other place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

[1] The second sentence was added by the Defense Production Act Amendments of 1951, see *supra*, pp. 50, 62–63.

(b) Any person who willfully violates any provision of section 405 of this title shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to a fine of not more than $10,000, or to imprisonment for not more than one year, or both. Whenever the President has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) * * *

(d) The President shall also prescribe the extent to which any payment made by way of fine pursuant to subsection (b) of this section 409, or any payment made to the United States or to any buyer in compromise or satisfaction of any liability or of any right of action, suit, or judgment, authorized pursuant to subsection (c) of this section 409 for selling any material or service, in violation of a regulation or order providing a ceiling or ceilings, shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any such person for the purposes of any other law or regulation.[2]

(e) * * *

SECTION 703 (50 U. S. C. APP. (SUPP. V) 2153)

(a) Except as otherwise specifically provided, the President may delegate any power or authority conferred upon him by this Act to any officer or agency of the Government, including any new agency or agencies (and the President is hereby authorized to create such new agencies, other than cor-

[2] This paragraph was added by the Defense Production Act Amendments of 1951, see *supra*, pp. 50, 63–64.

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porate agencies, as he deems necessary), and he may authorize such redelegations by that officer or agency as the President may deem appropriate. * * *

SECTION 704 (50 U. S. C. APP. (SUPP. V) 2154)

The President may make such rules, regulations, and orders as he deems necessary or appropriate to carry out the provisions of this Act. Any regulation or order under this Act may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this Act, or to prevent circumvention or evasion, or to facilitate enforcement of this Act, or any rule, regulation, or order issued under this Act. * * *

SECTION 705 (50 U. S. C. APP. (SUPP. V) 2155)

(a) The President shall be entitled, while this Act is in effect and for a period of two years thereafter, by regulation, subpena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act and the regulations or orders issued thereunder. The President shall issue regulations insuring that the authority of this subsection will be utilized only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent

authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency. In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the President, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) * * *

SECTION 706 (50 U. S. C. APP. (SUPP. V) 2156)

(a) Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the President that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order, with or without such injunction or restraining order, shall be granted without bond.

(b) The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this Act or any rule, regulation, order, or subpena thereunder, and of all civil actions under this Act to

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enforce any liability or duty created by, or to enjoin any violation of, this Act or any rule, regulation, order, or subpena thereunder. Any criminal proceeding on account of any such violation may be brought in any district in which any act, failure to act, or transaction constituting the violation occurred. Any such civil action may be brought in any such district or in the district in which the defendant resides or transacts business. Process in such cases, criminal or civil, may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found; the subpena for witnesses who are required to attend a court in any district in such case may run into any other district. The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such title or of such rule, regulation, or order. No costs shall be assessed against the United States in any proceeding under this Act. All litigation arising under this Act or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

SECTION 709 (50 U. S. C. APP. (SUPP. V) 2159)

The functions exercised under this Act shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this Act shall be accompanied by a

statement that in the formulation thereof there has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.

SECTION 715 (50 U. S. C. APP. (SUPP. V) 2164)

If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 717 (50 U. S. C. APP. (SUPP. V) 2166 AND 67 STAT. 129, 131)

(a) Title I (except section 104), title III, and title VII (except section 714) of this Act, and all authority conferred thereunder, shall terminate at the close of June 30, 1955. Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder, shall terminate at the close of June 30, 1953. Titles IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

(b) Notwithstanding the foregoing—

(1) * * *

(2) * * *

(3) Any agency created under this Act may be continued in existence for purposes of liquidation for not to ex-

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ceed six months after the termination of the provision authorizing the creation of such agency.

(c) * * *

3. The Regulations of October 27, 1942 (7 F. R. 8748) provide in pertinent part:

§ 4001.2 *Authority of National War Labor Board.* The Board shall, subject to the provisions of sections 1, 2, 3, 4, 8, and 9 of Title II of Executive Order No. 9250, of October 3, 1942, have authority to determine whether any

(a) Wage payments, or

(b) Salary payments to an employee totaling in amount not in excess of $5,000 per annum where such employee

(1) In his relations with his employer is represented by a duly recognized or certified labor organization, or

(2) Is not employed in a bona fide executive, administrative or professional capacity

are made in contravention of the Act, or any rulings, orders or regulations promulgated thereunder. Any such determination by the Board, made under rulings and orders issued by it, that a payment is in contravention of the Act, or any rulings, orders, or regulations promulgated thereunder, shall be conclusive upon all Executive Departments and agencies of the Government in determining the costs or expenses of any employer for the purpose of any law or regulation, either heretofore or hereafter enacted or promulgated, including the Emergency Price Control Act of 1942 or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States, or for the purpose of deter-

mining costs or expenses under any contract made by or on behalf of the United States. Any determination of the Board made pursuant to the authority conferred on it shall be final and shall not be subject to review by The Tax Court of the United States or by any court in any civil proceedings.

§ 4001.10 *Effect of unlawful payments.* (a) If any wage or salary payment is made in contravention of the Act or the regulations, rulings or orders promulgated thereunder, as determined by the Board or the Commissioner, as the case may be, the entire amount of such payment shall be disregarded by the Executive Departments and all other agencies of the Government in determining the costs or expenses of any employer for the purpose of any law or regulation, including the Emergency Price Control Act of 1942, or any maximum price regulation thereof, or for the purpose of calculating deductions under the revenue laws of the United States, or for the purpose of determining costs or expenses of any contract made by or on behalf of the United States. The term "law or regulations" as used herein includes any law or regulation hereafter enacted or promulgated. In the case of wages or salaries decreased in contravention of the Act or regulations, rulings or orders promulgated thereunder, the amount to be disregarded is the amount of the wage or salary paid or accrued. In the case of wages or salaries increased in contravention of the Act or regulations, rulings or orders promulgated thereunder, the amount to be disregarded is the amount of the wage or salary paid or accrued and not merely an amount representing an increase in such wage or salary.

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In the case of a salary in excess of the amount allowable under § 4001.9 which is paid or accrued to an employee during his taxable year in contravention of the Act or regulations, rulings or orders promulgated thereunder, the amount to be disregarded is the full amount of such salary and not merely the amount representing the excess over the amount allowable under such § 4001.9.

(b) Payments made or received in violation of any regulations, rulings or orders promulgated under the authority of the Act are subject to the penal provisions of the Act.

4. Economic Stabilization Agency General Order No. 15, 17 F. R. 2994, as amended November 4, 1952, 17 F. R. 9977, provides:

AUTHORITY: Sections 1 to 5 issued under sec. 704, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2154. Interpret or apply Title IV, 64 Stat. 803, as amended; 50 U. S. C. App. Sup. 2101–2110, sec. 703, 64 Stat. 816, as amended; 50 U. S. C. App. Sup. 2153; E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.; E. O. 10281, Aug. 28, 1951, 16 F. R. 8789; 3 CFR 1951 Supp.

SECTION 1 *Purpose.* Pursuant to the Defense Production Act, as amended, and Executive Order 10161, as amended, this order sets forth policy and procedure with respect to disallowances and clarifies the respective functions of the Economic Stabilization Administrator and the constituent organizations of the Economic Stabilization Agency in determining disallowances under Title IV of the act, as amended.

SEC. 2 *Authority of the Director of Price Stabilization.* (a) The Director of Price Stabilization has authority to deter-

mine whether any person has made any payment either in money, or property, or other consideration in violation of the act or of any regulation, order or requirement relating to prices under the act. Where such determination has been made, the Director has authority further to determine the amount of such payment to be disregarded and disallowed for the purposes listed in section 4 (a).

(b) In the case of payments by any person by way of fine for violation of the act, or by way of compromise or satisfaction of any liability, right of action, suit or judgment for violation of a price regulation or order under the act, the Director shall further determine the amount of such payment to be disallowed and disregarded and the purpose or purposes for which it shall be disallowed listed in section 4 (a).

(c) In determining such amount to be disallowed and disregarded, extenuating and mitigating circumstances of the character described in section 4 (b) may be taken into consideration.

SEC. 3 *Authority of the Wage Stabilization Board, Office of Salary Stabilization, and the Railroad and Airline Wage Board.* The National Enforcement Commission, created by General Order 18 of the Economic Stabilization Agency, issued July 28, 1952 (17 F. R. 6925), has authority, with respect to persons within the jurisdiction of the Wage Stabilization Board, the Salary Stabilization Board and the Office of Salary Stabilization, and the Railroad and Airline Wage Board, to determine whether any wage, salary, or other compensation has been paid or accrued, at any time, in violation of any provision of the Defense Production Act of 1950, as

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amended, or any regulation or order or directive heretofore or hereafter promulgated under the act, or any regulation or order or directive heretofore or hereafter promulgated into the act, and further to determine the amount of payments or accruals to be disregarded and disallowed for the purposes enumerated in section 4 (a) below. Such determination shall be made by the Commission after any of the foregoing named constituent organizations of this Agency have instituted an enforcement proceeding before it or after any such organization has submitted a settlement proposal to the Commission for its approval. Extenuating and mitigating circumstances of the character described in section 4 (b) may be considered in determining the amount to be disallowed and disregarded.

SEC. 4 *Disallowance policy*—(a) *Purposes of disallowance.* The disallowances under the authority granted by sections 2 and 3 may be made for one or more of the purposes of:

(1) Calculating deductions or the basis for determining gain under the Revenue Laws of the United States;

(2) Determining costs and expenses under any contract made by or on behalf of the United States, either directly or indirectly;

(3) Establishing any maximum price pursuant to the act; and

(4) Determining the costs or expenses of any person for the purpose of any other law or regulation, whether heretofore or hereafter promulgated.

(b) *Amounts of disallowance and extenuating circumstances.*

(1) The amount paid or accrued in violation of the act or regulations, orders or determinations made thereunder which may be disallowed and disregarded shall be the entire amount of the wage, salary or other compensation paid or accrued, or the entire amount of the payment either in money or property or other consideration, and not merely the amount paid or accrued in excess of the legal maximum of such wage, salary, other compensation, or payment. Where extenuating and mitigating circumstances exist, of the character described in the following paragraph, less than the entire amount of such payments or accruals may be disregarded and disallowed; provided that the usual and general policy shall be to disallow an amount at least equal to that portion of any payment or accrual in excess of whatever payment was permissible under the governing regulation, order or determination.

(2) Extenuating and mitigating circumstances which may be taken into account include:

(i) Prompt and voluntary disclosure of possible violation;

(ii) Prompt and full cooperation with investigating and other officials;

(iii) Prompt remedying of violation of applicable rules, regulations, or orders;

(iv) The adoption of prompt and adequate measures to prevent repetition of any violation of applicable rules, regulations or orders;

(v) Inadvertent rather than intentional and willful violations;

(vi) Such other factors as may be appropriate in the particular case.

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SEC. 5 *Authority to issue rules, regulations and orders.* The Director of Price Stabilization, the Wage Stabilization Board, the Office of Salary Stabilization, and the Railroad and Airline Wage Board, as the case may be, or their respective designees, subject to the supervision and direction of the Economic Stabilization Administrator, may issue such rules, regulations, and orders, consistent with this order, which they deem necessary to carry out the provisions of this authority.

SEC. 6 *Transmittal of determination to appropriate governmental agencies.* The Director of Price Stabilization and the National Enforcement Commission shall certify and forward their final determination in each case to the appropriate governmental agency or agencies. Any such determination shall be conclusive on all Executive Departments and agencies of the Government, and they shall disregard and disallow the amounts thus certified. Any determination made pursuant to this authority under the Defense Production Act, as amended, shall be final and not subject to review by The Tax Court of the United States or by any court in any civil proceeding.

SEC. 7 *Effect on other orders.* Any orders or parts of orders, the provisions of which are inconsistent with the provisions of this order are hereby superseded or amended accordingly.

SEC. 8 *Approval of prior actions.* All action heretofore taken by the constituent organizations or their respective designees under prior rules, regulations, and orders with respect to disallowances is approved.

5. Economic Stabilization Agency General Order No. 18, 17 F. R. 6925, as amended November 4, 1952, 17 F. R. 9977, provides:

> SECTION 1 *Purpose.* (a) The purpose of this order is to establish a National Enforcement Commission within the Economic Stabilization Agency and to define its functions.
>
> SEC. 2 *Legal basis and authority.* (a) This order is promulgated under the authority vested in the Economic Stabilization Administrator by the Defense Production Act of 1950, as amended (Pub. Law 774, 81st Cong., Pub. Laws 96 and 429, 82nd Cong.), Executive Order 10161, as amended, Executive Order 10182, and Executive Order 10205.
>
> SEC. 3 *Organization*—(a) *National Enforcement Commission.* The National Enforcement Commission is hereby established within the Economic Stabilization Agency. The Commission shall consist of three public members and two alternate public members appointed by the Administrator. One of the three public members shall be designated as Chairman. The Chairman shall be assisted by a Counsel to the Commission, who may be one of the two alternate public members and who shall be in charge of the administrative functions of the Commission in the absence of the Chairman.
>
> SEC. 4 *Functions of the National Enforcement Commission.* (a) The functions of the National Enforcement Commission (hereinafter referred to as the Commission) shall be, with respect to persons within the jurisdiction of the Wage Stabilization Board, the Salary Stabilization Board and the Office of Salary Stabiliza-

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tion, and the Railroad and Airline Wage Board, to determine whether any wage, salary, or other compensation has been paid or accrued, at any time, in violation or contravention of any provision of the Defense Production Act of 1950, as amended, or any regulation or order or directive heretofore or hereafter promulgated under the act. Such determination shall be made by the Commission after any of the foregoing named constituent organizations of this Agency have instituted an enforcement proceeding before it or after any such organization has submitted a settlement proposal to the Commission for its approval. Such determination shall be final within the Economic Stabilization Agency.

(b) The Commission is further authorized to certify and transmit such determinations in accordance with the policy and procedure set forth in Economic Stabilization Agency General Order No. 15, and other orders, directives, general policies or general regulations of the Economic Stabilization Administrator.

SEC. 5. *Redelegation of authority.* (a) The authority delegated to the Economic Stabilization Administrator with respect to the imposition of disallowance sanctions under section 405 (b) of the Defense Production Act, as amended, for the violation or contravention of any provisions of, or any orders or any regulations issued under said act, as amended, relating to the payment of wages, salaries, or other compensation, is hereby redelegated to the Commission, in accordance with the functions described above.

(b) The Wage Stabilization Board, the Salary Stabilization Board and the Office of Salary Stabilization and the Railroad and

Airline Wage Board are hereby directed to delegate effective immediately any subsidiary authority necessary on their part to carry out the foregoing delegations.

SEC. 6 *Tranfer of cases, proceedings, records, property and personnel.* (a) All the cases and proceedings presently pending before the National Enforcement Commission or its Regional Enforcement Commissions previously established under the Wage Stabilization Board are hereby transferred to the Commission established by this order.

(b) All records pertaining to the foregoing cases and proceedings, as well as the property and personnel of the National Enforcement Commission previously established under the Wage Stabilization Board, are also hereby transferred to the Commission.

(c) All the prior decisions and certifications of the National Enforcement Commission previously established by the Wage Stabilization Board are hereby continued in full force and effect.

SEC. 7 *Administrative services.* (a) The Commission shall share the administrative service facilities of the Wage Stabilization Board relating to budget, fiscal, personnel, supply, space, and other administrative management matters.

SEC. 8 *Effect on other orders.* (a) General Orders Nos. 15 and 16 and General Order No. 8, Revised, are hereby specifically superseded, and amended accordingly, to the extent that they are inconsistent herewith. However, nothing contained herein shall be construed to limit the prosecution and investigative functions of the Wage Stabilization Board, the Salary Stabilization Board and the Office of Salary Stabilization, and

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the Railroad and Airline Wage Board relating to enforcement, delegated in General Order 15, as amended, 16, and 8, Revised. Any other orders and regulations or parts of orders and regulations the provisions of which are inconsistent with the provisions of this order are hereby superseded and amended accordingly.

SEC. 9 *Effective rate.* (a) This order shall become effective at the close of the 29th day of July, 1952, commencing with the 30th day of July, 1952.

6. Wage Stabilization Board General Procedural Regulation of September 20, 1951, 16 F. R. 10018, as revised August 21, 1952, 17 F. R. 7737, provides in pertinent part:

SECTION 1.1 *Enforcement proceedings.* Whenever it has been determined that any wage, salary, or other compensation has been paid in contravention of the regulations and orders issued or promulgated under the act, the extent to which any such wage, salary, or other compensation payment shall be disregarded by the executive departments and other governmental agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation shall be prescribed in accordance with the provisions of section 405 (b) of the act. Any wage, salary, or other compensation paid in contravention of the regulations and orders issued or promulgated under the act may be disallowed in whole or in part for one or more of the following purposes:

(a) Calculating deductions or the basis for determining gain under the Revenue Laws of the United States;

(b) Determining costs and expenses under any contract made by or on behalf of

the United States, either directly or indirectly;

(c) Establishing any maximum price pursuant to the act; and

(d) Determining the costs or expenses of any person for the purpose of any other law or regulation.

SEC. 1.2 *Institution of enforcement proceedings.* Whenever the Office of Salary Stabilization, the Wage Stabilization Board, or the Railroad and Airline Wage Board has reason to believe that any person has paid wages, salaries, or other compensation in contravention of the act or regulations and orders issued or promulgated pursuant thereto or determinations made thereunder, such Board or office may institute an enforcement proceeding to ascertain whether a contravention has occurred and to determine the amount to be certified to and disregarded by the executive departments and other government agencies.

* * * * *

SEC. 2.3 *Hearings.* (a) The hearing for the purpose of taking evidence upon the issues raised by the parties' pleadings shall be conducted by an Enforcement Commissioner. Enforcement Commissioners shall be appointed by the Economic Stabilization Administrator and shall be designated by the Chairman of the National Enforcement Commission for hearing assignments. For cause, an Enforcement Commissioner may be designated to take the place of the Enforcement Commissioner previously designated to conduct the hearing. Such hearings shall be public unless otherwise ordered by the National Enforcement Commission or by the Enforcement Commissioner presiding at the hearing.

(b) Upon the expiration of the time within which the respondent must answer,

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the National Enforcement Commission shall, as soon as possible, designate an Enforcement Commissioner for the hearing, fix the time and place of hearing and shall give not less than 15 days' written notice thereof to the parties. The notice shall set forth (1) the time and place of the hearing; (2) that the respondent has the right to a hearing before an Enforcement Commissioner, as provided in paragraph (a) of this section; (3) that at such hearing the respondent may be represented by counsel or other representative and will be given reasonable opportunity to present testimony and evidence and to examine and cross-examine witnesses on all matters relating to the allegations of the complaint; and (4) the name and post office address of the designated Enforcement Commissioner.

* * * * *

FINDINGS AND DETERMINATION; RECORD

SEC. 4.1 *Findings and determination of Enforcement Commissioners.* (a) Proposed findings of fact and a recommended determination, as well as briefs in support thereof, may be submitted to the Enforcement Commissioner by any party within 15 days after the conclusion of the hearing or such additional time as the Enforcement Commissioner may prescribe at the conclusion of the hearing.

(b) As soon as feasible after the conclusion of the hearing, the Enforcement Commissioner shall make his findings and determination.

(c) The findings and determination of the Enforcement Commissioner shall be in writing. If, upon the entire record of the case, the Enforcement Commissioner finds that any wage, salary, or other compensation

payment has been made in contravention of the act and the regulations or orders issued thereunder, he shall determine the amount to be disregarded or disallowed, the purpose or purposes for which such amount shall be disregarded or disallowed, and by what departments or government agencies such amount shall be disregarded or disallowed.

(d) In determining costs or expenses to be disregarded or disallowed, the Enforcement Commissioner shall comply with the provisions of General Order 15, Economic Stabilization Administrator.

(e) The Enforcement Commissioner shall file the original and two copies of his findings and determination with the National Enforcement Commission and cause a copy thereof to be served upon each of the parties. Upon the filing of the findings and determination, the case will be transferred to the National Enforcement Commission. Service of the findings and determination shall be complete upon mailing.

(f) If no appeal is filed as hereinafter provided, the findings and determination of the Enforcement Commissioner shall, in the absence of clear and prejudicial error, be adopted by the National Enforcement Commission and a certificate of disallowance based thereon issue to the appropriate departments or agencies of the government.

SEC. 4.2 *Record.* The complaint and any amendments thereto, notice of hearing, order designating Enforcement Commissioner, answer and any amendments thereto, motions, rulings, orders, and stenographic report of the hearing, stipulations and exhibits, and such other documents as the Enforcement Commissioner may deem proper, together with the findings and determination of the Enforcement Commis-

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sioner, shall constitute the record in the case.

APPEALS

SEC. 5.1 *Appeals to the National Enforcement Commission*—(a) *Right of appeal.* Any party may appeal to the National Enforcement Commission from the findings and determination of the Enforcement Commissioner.

(b) *Form and contents of appeal.* The appeal shall be in writing and shall state specifically the objections to the findings and determination from which the appeal is taken. No new evidence shall be considered on appeal.

(c) *Time and place of filing appeals.* An appeal may be taken within 30 days after service on the parties of the findings and determination. The appeal and the original and two copies of any memorandum or brief in support thereof shall be filed with the National Enforcement Commission, Washington 25, D. C., and a copy thereof shall be served upon each of the other parties. If timely request is made to the National Enforcement Commission, the time for filing an appeal and such memorandum or brief may be extended. The extension of time for filing such an appeal and such memorandum or brief is solely within the discretion of the National Enforcement Commission.

(d) *Submission of briefs on appeal.* Within 10 days after the filing of an appeal any other party may file a memorandum or brief with respect to any issues raised by the appeal. The original and two copies of any such memorandum or brief shall be filed with the National Enforcement Commission and a copy thereof

shall be served upon each of the other parties.

(e) *Oral argument on appeal.* The appellant may request oral argument on appeal at the time of the filing of the appeal. Any other party may request oral argument within 10 days after the filing of the appeal. Such requests shall be in writing and shall be addressed to the National Enforcement Commission. The National Enforcement Commission shall give timely notice in writing of its action on the request for oral argument to all parties.

SEC. 5.2 *Decision on appeal.* (a) The National Enforcement Commission shall render its decision upon the entire record of the case including the record presented to the Enforcement Commissioner at the hearing, the findings and determination of the Enforcement Commissioner, and any memoranda or briefs submitted in connection with the appeal by any of the parties. The National Enforcement Commission may affirm, modify, or reverse the findings and determination of the Enforcement Commissioner in whole or in part, may remand the case for further hearing, or may dismiss the complaint.

(b) Copies of the findings and determination shall be sent to the respondent by registered mail, and copies shall be mailed to each other party. Within 10 days after such mailing, upon notice to the other parties, any party may petition the National Enforcement Commission for reconsideration of its findings and determination. The National Enforcement Commission shall give notice in writing to all parties of its action on such petition.

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(c) The findings and determination of the National Enforcement Commission shall be final.

CERTIFICATES

SEC. 6.1 *Certificate of disallowance.* Whenever there has been a final decision in an enforcement proceeding imposing a disallowance sanction, as defined in section 1.1 of this regulation, the National Enforcement Commission shall issue a Certificate of Disallowance setting forth the name and address of the respondent or respondents and the amount which shall be disallowed and disregarded by any Executive Department or other agency or departments or agencies of the government in determining the costs and expense of the respondent. The certificate of disallowance shall be transmitted by the National Enforcement Commission to the appropriate Executive Departments or other agencies of the government and a copy served upon the appropriate board or office and the respondent. The certificate of disallowance shall be conclusive for the purposes stated therein.

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